



City of Huntington Beach Planning and Building Department

STUDY SESSION REPORT

TO: Planning Commission
FROM: Scott Hess, AICP, Director of Planning and Building
BY: Jane James, Senior Planner *JJ*
DATE: September 27, 2011

SUBJECT: DEVELOPMENT AGREEMENT NO. 08-001 (THE VILLAGE AT BELLA TERRA DEVELOPMENT AGREEMENT)

**APPLICANT/
PROPERTY
OWNER:** Becky Sullivan, BTDJM Phase II Associates, LLC, 922 Laguna Street, Santa Barbara, CA 93101

LOCATION: 7601 Edinger Avenue, Huntington Beach, CA 92647 (north side of Edinger Avenue, east of Union Pacific Rail Road and west of existing Bella Terra development)

PROJECT REQUEST AND SPECIAL CONSIDERATIONS

Development Agreement No. 08-001 represents a request to enter into a Development Agreement between the City of Huntington Beach and BTDJM Phase II Associates, LLC, pursuant to a request by BTDJM for The Village at Bella Terra mixed use project, approved for the 10.40-acre site formerly occupied by the Montgomery Wards automotive repair building.

On August 24, 2010, the Planning Commission approved General Plan Amendment (GPA) No. 10-001, Zoning Text Amendment (ZTA) No. 10-001, and Site Plan Review (SPR) No. 10-001 for The Village at Bella Terra – Costco Wholesale facilitating the development of a regional commercial big-box retail with gasoline service station and mixed-use retail and residential project. In general, this project amended the planning areas within Specific Plan (SP) No. 13, established warehouse sales outlets and gasoline service stations as permitted uses, created corresponding design and development standards for such uses, and approved development of a 154,113 square foot Costco Wholesale with associated 16-pump gas station and a mixed-use development consisting of 467 residential units and 30,000 square feet of general retail and restaurant uses. The project requires elevation of the site in accordance with floodplain regulations resulting in the import of 32,810 cubic yards of fill soil. The approximately 24 acre master plan site is located between Edinger Avenue and Center Avenue, just west of the existing Bella Terra mall, and just east of the Union Pacific rail road line.

The Planning Commission's action on SPR No. 10-001 was final and no appeals were filed. On September 20, 2010, the City Council approved GPA No. 10-001 and ZTA No. 10-001, concluding the legislative actions required for the proposed project.

In addition, an Addendum to the previously certified Environmental Impact Report (EIR No. 07-03) was prepared for the project and considered by both the Planning Commission and the City Council. The development agreement request was included in the Addendum to EIR No. 07-03.

The applicant applied for Development Agreement No. 08-001 in 2008 but did not complete the application submittal until recently. The Development Agreement covers only the mixed use residential and retail development on the southern portion of the site and does not include the Costco warehouse or the Costco gas station.

The City is authorized pursuant to California Government Code Section 65864 et.seq. and Chapter 246 of the HBZSO to enter into binding development agreements with persons or entities owning legal interests in real property located within the City. The objective of a development agreement is to provide assurances that an applicant may proceed with a project in accordance with existing policies and standards in place at the time of project approval. The City and property owner/developer desire to enter into a development agreement for the subject site in order to achieve the mutually beneficial development of the property and ensure that the project is developed in accordance with the approved Site Plan Review No. 10-001. Additionally, the property owner/developer requests several considerations in the development agreement as follows:

- Ten year term (DA Section 2.3);
- City to provide cooperation with processing amendments to the DA, the approved development plan, any future development plans, automatically extend Tentative Tract Map No. 17261 for ten years, process Lot Line Adjustment requests on an “administrative approval” basis only, and agree to process multiple final maps (DA Section 3.1.3);
- Right to construct approved project at current development/exaction fees during the term of the agreement and development shall not be subject to future fees that may be adopted (DA Section 3.2.1);
- Delay payment of For Sale Project Park and Recreation fees until units are actually sold at future unknown date; in the meantime, developer will pay Rental Project Park and Recreation fees (DA Sections 5.1, 5.1.1, and 5.1.2);
- Allow Developer to initially rent the residential units as apartment units, notify tenants that units may be sold at a later date, and then subsequently create a condo project without being subject to Residential Condominium Conversion standards although first right of refusal to buy must be given to each tenant along with a 90-day notice (DA Section 5.1.4).

General Plan Implementation Program *I-LU-7 Development Agreements* states, “Where appropriate, the city may use Development Agreements as binding implementation tools. Development Agreements are authorized by State law to enable a city to enter into a binding contract with a developer that assures the city as to the type, character, and quality of development and additional ‘benefits’ that may be contributed and assures the developer that the necessary development permits will be issued regardless of changes in regulations.” When approving a Development Agreement the City Council must make findings, one of which includes the fact that the Council has considered the fiscal impact of the Development Agreement on the City and the effects of the project on regional housing needs and balanced these needs against the “public service needs” of the City’s residents and “available fiscal and environmental resources.” In consideration of the proposed Development Agreement and the advantages it provides to the developer, the developer is asked to provide “additional benefits” that exceed what would normally be required or conditioned on the project pursuant to City’s codes, ordinances, and policies, General Plan, State Law, Redevelopment Law, and CEQA (i.e., subdivision exactions, impact fees, conditions of approval, and mitigation measures).

Therefore, the City requests the following considerations:

- As a benefit to the City, Developer shall construct off-site public improvements consisting of repair of curb, gutter and sidewalk, and repaving of the north side of Center Street between the 405 Freeway off-ramp and the railroad tracks on the westerly boundary of the site (DA Section 4.1.1);
- As previously stipulated in the 2010 Affordable Housing Agreement between BTDJM Phase II Associates, LLC and the Redevelopment Agency, Developer shall contribute \$250,000.00 toward construction of a pedestrian path between Bella Terra and the Boardwalk development. The additional language in the DA further specifies that the funds may be used toward planning, design, permit fees and construction of the off-site bridge. The DA further guarantees that the Agency may withhold payment through the AHA should the Developer fail to contribute the \$250,000.00 when requested by the City (DA Sections 4.1.2 and 5.1.3).

This development agreement differs from the recently approved agreement between the City, Freeway Industrial Park, and Sares-Regis, which was required by the conditions of approval and Beach and Edinger Corridors Specific Plan (BECSP) for The Boardwalk project. The BECSP requires a development agreement to be approved by Council and recorded to provide for affordable rental dwelling units in accordance with Section 2.2.3 of the BECSP and the Huntington Beach Zoning and Subdivision Ordinance (HBZSO). Specific Plan No. 13 does not require the development agreement; rather the applicant initiated the development agreement at their own request. The Village at Bella Terra is subject to affordable housing units pursuant to the conditions of approval and Redevelopment Law.

CURRENT LAND USE, ZONING AND GENERAL PLAN DESIGNATIONS

LOCATION	GENERAL PLAN	ZONING	LAND USE
Subject Property –	CR-F2-sp-mu-(F14) (Regional Comm'l-0.5-FAR-Specific Plan Overlay-Mixed Use Overlay-1.75 FAR [MU-0.07{C}/45 du/acre])	Specific Plan No. 13-Bella Terra Huntington Beach - Area B	Vacant (recently demolished Montgomery Ward store and auto repair)
North of Subject Property	CR-F2-sp-mu-(F14) (Regional Comm'l-0.5-FAR-Specific Plan Overlay-Mixed Use Overlay-1.75 FAR [MU-0.2{C}/45 du/acre])	Specific Plan No. 13-Bella Terra Huntington Beach – Area A	Vacant (recently demolished Montgomery Ward store, auto repair, and Mervyn's store)
West of Subject Property (across railroad tracks) and South (across Edinger Ave)	M-sp (Mixed Use-Specific Plan Overlay)	Specific Plan No. 14 –Beach and Edinger Corridors Specific Plan	North - Old World Village; West - Approved for 487-units and 14,500 square feet of commercial space (former Levitz) and College Country Center (Approved for Amstar/Red Oak mixed use residential/commercial project); and South - Retail
East of Subject Property	CR-F2-sp-mu (F9) (Regional Comm'l-0.50 FAR-Specific Plan Overlay-Mixed Use Overlay-1.5 FAR [MU-0.5{C}/25 du/acre])	Specific Plan No. 13-Bella Terra Huntington Beach	Bella Terra Mall

APPLICATION PROCESS AND TIMELINES

DATE OF COMPLETE APPLICATION:

September 2, 2011

MANDATORY PROCESSING DATE(S):

March 2, 2012 (Within 6 months of complete application)

CEQA ANALYSIS/REVIEW

The development agreement was included in the scope of The Village at Bella Terra Environmental Impact Report (EIR No. 07-03) certified by the Planning Commission on October 14, 2008 and Addendum to EIR No. 07-03 considered by the Planning Commission on August 24, 2010.

COMMENTS FROM CITY DEPARTMENTS AND OTHER PUBLIC AGENCIES

Development Agreement No. 08-001 was drafted by outside counsel for the Redevelopment Agency in coordination with the City Attorney's Office, Planning Division, Public Works Department, and Economic Development Department.

PUBLIC MEETINGS, COMMENTS AND CONCERNS

No public meetings specific to Development Agreement No. 08-001 have occurred.

PLANNING ISSUES

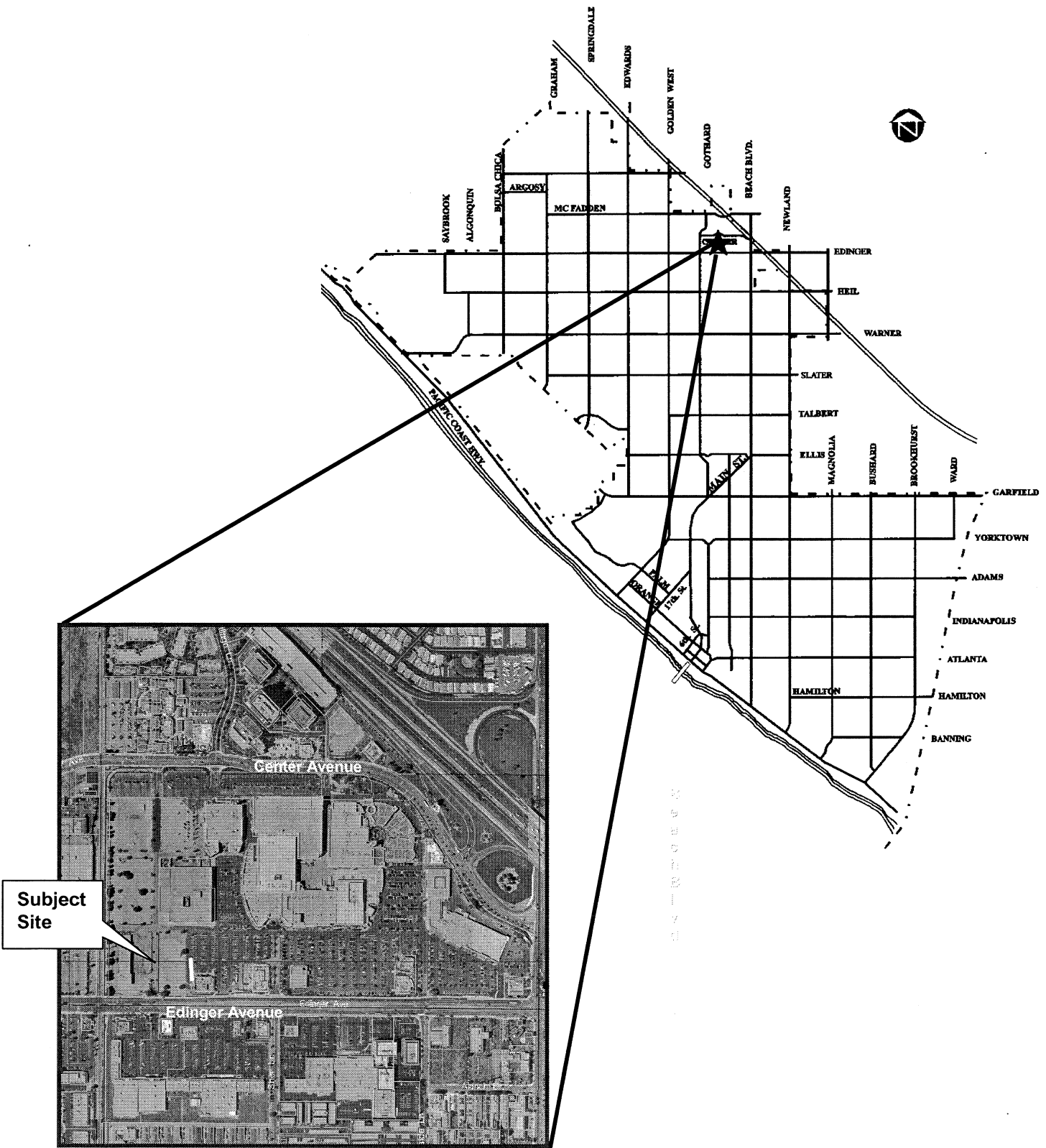
The primary issues for the Planning Commission to consider in processing the application are:

- Special considerations requested by the applicant;
- Additional benefits requested by the City;
- Conformance to applicable goals and policies of the General Plan and the provisions of the Specific Plan No. 13;
- Conformance to the provisions of Chapter 246 – Development Agreements of the Huntington Beach Zoning and Subdivision Ordinance; and
- Consistency with Site Plan Review No. 10-001 for The Village at Bella Terra mixed use project approved by the Planning Commission on August 24, 2010 and Entitlement Plan Amendment No. 2011-002 approved by the Director of Planning and Building on April 8, 2011.

ATTACHMENTS:

1. Vicinity Map
2. Draft Ordinance – The Village at Bella Terra Development Agreement

SH:HF:MBB:JJ:kd



VICINITY MAP

DEVELOPMENT AGREEMENT NO. 2008-001
(THE VILLAGE AT BELLA TERRA – MIXED USE - 7601 EDINGER AVENUE)

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH ADOPTING A
DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF HUNTINGTON
BEACH AND BTDJM PHASE II ASSOCIATES, LLC (PROPERTY OWNER)
(DEVELOPMENT AGREEMENT NO. 08-001)

WHEREAS, the Planning Commission approved Site Plan Review No. 10-001 to develop an approximately 10.4-acre property located at 7601 Edinger Avenue (Property) with a mixed use project consisting of 467 apartment units, 30,000 square feet of retail/restaurant uses, a shared use of parking, and a three foot, nine inch retaining wall along the west property line (Project) pursuant to Specific Plan No. 13 (SP 13); and

The City and Property owner each mutually desire to enter into a development agreement with one another, known as Development Agreement No. 08-001, to permit and ensure that the Property is developed in accordance with the approved Site Plan Review No. 10-001 to achieve the mutually beneficial development of the Property.

NOW, THEREFORE, the City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. That the City Council hereby finds that Development Agreement No. 08-001 conforms to Government Code Section 65864 et. seq. and that:

- a. Development Agreement No. 08-001 is consistent with the Huntington Beach General Plan and the applicable provisions of Specific Plan No. 13.
- b. Development Agreement No. 08-001 is consistent with Chapter 246 of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) and the Huntington Beach Municipal Code.
- c. Development Agreement No. 08-001 will not be detrimental to the health, safety and general welfare, and will not adversely affect the orderly development of the property because it is consistent with applicable land use regulations of Specific Plan No. 13, mitigation measures adopted for the Project in accordance with Addendum EIR No. 07-003, and conditions approved for Site Plan Review No. 10-001.
- d. The City Council has considered the fiscal effect of Development Agreement No. 08-001 on the City and the effect on the housing needs of the region in which the City is situated and has balanced these needs against the public service needs of its residents and available fiscal and environmental resources.

SECTION 2. Based on the above findings, the City Council of the City of Huntington Beach hereby approves Development Agreement No. 08-001 and adopts it by this ordinance pursuant to Government Code Section 65867.5. This action is subject to a referendum.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the _____ day of _____, 2011

Mayor

ATTEST:

INITIATED AND APPROVED:

City Clerk

Director of Planning and Building

REVIEWED AND APPROVED:

APPROVED AS TO FORM:

City Manager

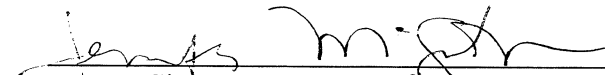

8.15.11 City Attorney MV 8-9-11

Exhibit A - Development Agreement No. 2008-001

EXHIBIT A

ATTACHMENT NO. 2.3

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City Clerk
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

DRAFT

Space Above This Line for Recorder's Office Use Only

(Exempt from Recording Fee per Gov. Code §§ 6103 and 27383)

DEVELOPMENT AGREEMENT
(VILLAGE AT
BELLA TERRA PROJECT)

by and between

CITY OF HUNTINGTON BEACH

and

BTDJM PHASE II ASSOCIATES, LLC

ATTACHMENT NO. 2.4

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DEVELOPMENT AGREEMENT
(VILLAGE AT BELLA TERRA PROJECT)

This DEVELOPMENT AGREEMENT (VILLAGE AT BELLA TERRA PROJECT) (the "Agreement") is dated for reference purposes only as of the ____ day of _____, 2011, and is being entered into by and between the CITY OF HUNTINGTON BEACH, a municipal corporation, organized and existing under the laws of the State of California ("CITY"), and BTDJM PHASE II ASSOCIATES, LLC, a Delaware limited liability company ("DEVELOPER"), pursuant to the authority of Sections 65864 through 65869.5 of the California Government Code (the "Development Agreement Legislation") and Article XI, Section 2, of the California Constitution. CITY and DEVELOPER are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

RECITALS

This Agreement is predicated upon the following facts:

A. California Development Agreement Legislation authorizes the CITY to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property in order to, among other things: ensure high quality development in accordance with comprehensive plans; provide certainty in the approval of development projects so as to avoid the waste of resources and the escalation in the cost of housing and other development to the consumer; provide assurance to the applicants for development projects that they may proceed with their projects in accordance with existing policies, rules, and regulations, subject to the applicable conditions of approval, in order to strengthen the public planning process and encourage private participation in comprehensive planning and reduce the private and public economic costs of development; and encourage and provide for the development of public infrastructure and amenities to support the development of new housing and commercial projects.

B. DEVELOPER is the fee owner of that certain real property consisting of approximately 10.40 acres of land area located at 7601 Edinger Avenue in the northern portion of the City of Huntington Beach, County of Orange, State of California, that City has designated as General Plan Sub-area 5B and Specific Plan 13 Area B and that is more particularly described in the Legal Description in Exhibit "A" attached hereto and made a part hereof (the "Property") and depicted in the Site Plan in Exhibit "B" attached hereto and made a part hereof.

C. DEVELOPER desires to develop the Property as a mixed-use residential and commercial development commonly known as The Village at Bella Terra (the "Project") in accordance with the provisions of this Agreement, the "Development Plan" described herein, and other applicable regulations of the City of Huntington Beach and other governmental agencies having jurisdiction over the Property and the Project.

D. CITY and DEVELOPER have negotiated this Agreement in order to create a beneficial development project and a physical environment that will conform to and complement the goals of CITY's General Plan, including being sensitive to human needs and values, and facilitate efficient traffic circulation. By its approval and execution of this Agreement, CITY has

determined that CITY (including, without limitation the existing and future residents of CITY) will receive the following direct and indirect extraordinary benefits from the implementation of this Agreement:

1. DEVELOPER shall construct/install certain improvements (the "Off-site Public Improvements") as provided herein, that will provide substantial benefits to CITY and its residents; and

2. DEVELOPER shall contribute TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000) towards the planning, design, permit fees and construction of a certain pedestrian path between the Property and an adjacent property with APN [insert](referenced hereinafter as "the Levitz Parcel"), at the time a building permit is issued for Development of the Levitz Parcel if such permit is issued during the Term of this Agreement.

E. DEVELOPER will provide the Affordable Housing in accordance with that certain AFFORDABLE HOUSING AGREEMENT ("AHA") entered into as of October 4, 2010, by and between the AGENCY and DEVELOPER.

F. DEVELOPER and CITY have taken the following actions with respect to this Agreement and the Project on or before the Effective Date of this Agreement:

1. on November 17, 2008, after a duly noticed and conducted public hearing, the City Council of CITY adopted its Resolution No. 1625 certifying the Environmental Impact Report (the "Project EIR") for the original Village at Bella Terra project (the "Original Project") that at that time was proposed to be developed on approximately 15.85 acres of land area comprising the Property and a portion of the adjacent General Plan Sub-area 5A and Specific Plan 13 Area B (the "Original Project Site"), approving a Mitigation Monitoring Program with respect thereto, and making certain findings and determinations with respect to the Original Project, including the adoption of a statement of overriding considerations;

2. on November 17, 2008, after a duly noticed and conducted public hearing, the City Council of CITY adopted its Resolution No. 2008-69 approving General Plan Amendment (GPA) No. 07-001 amending the Land Use Element of CITY's General Plan relating to the Original Project Site to change the designation of the Original Project Site from CR-F2-sp-mu (F9) (Regional Commercial) to CR-F2-sp-mu (F14) and authorize the following changes to the permitted land uses of the Original Project Site: (a) allow horizontally integrated mixed-use development in addition to the previously allowed vertical mixed-use development; (b) increase the allowable residential density from the previously allowed 25 dwelling units per acre (DU/acre) up to a maximum of 45 DUs/acre (with limitations specified below); (c) reduce the allowable commercial floor area ratio (FAR) from the previously authorized maximum of 0.5 to 0.2; (d) increase the allowable total building FAR from the previously authorized maximum of 1.5 to 1.75 (1,208,245 square feet of total commercial and residential development); and (e) increase the maximum number of stories of buildings from the previously authorized maximum of 4 stories to 6 stories;

3. on November 17, 2008, after a duly noticed and conducted public hearing, the City Council of CITY adopted its Resolution No. 2008-70 approving Specific Plan No. 13 (Zoning Text Amendment No. 07-002), which amends Specific Plan (SP) 13 applicable to the Original Project Site to allow residential uses on the Original Project Site consistent with GPA No. 07-001, establish residential design and development standards, and provide for development standards for commercial uses, including without limitation development standards applicable to parking, setbacks, and building heights, to be evaluated in accordance with the Specific Plan for the Original Project Site;

4. on March 15, 2010, DEVELOPER submitted an application to CITY to further amend the General Plan (GPA No. 10-001) and Specific Plan No. 13 (Zoning Text Amendment No. 10-001) in the following respects: (a) to realign the dividing line between General Plan Sub-areas 5A and 5B and Specific Plan 13 Areas A and B by increasing the size of General Plan Sub-area 5A and Specific Plan 13 Area A from 41.06 acres to 46.51 acres and by correspondingly decreasing the size of General Plan Sub-area 5B and Specific Plan 13 Area B from 15.85 acres to 10.40 acres; (b) by adding "big box" retail and fuel station uses and design and development standards to the commercial uses and design and development standards for General Plan Sub-area 5A and Specific Plan 13 Area A; (c) to increase the maximum amount of authorized commercial development in General Plan Sub-area 5A and Specific Plan 13 Area A; (d) to retain the mixed-use overlay within the 10.4 acres of land area encompassed by the downsized General Plan Sub-area 5B and Specific Plan 13 Area B (i.e., on the Property that is the subject of this Agreement); and (e) to decrease the maximum number of authorized residential units in General Plan Sub-area 5A and Specific Plan 13 Area B from seven hundred thirteen (713) to four hundred sixty-eight (468) and to decrease the maximum amount of authorized commercial development in General Plan Sub-area 5B and Specific Plan 13 Area B from one hundred thirty-eight thousand eighty-five (138,085) square feet to thirty thousand (30,000) square feet;

5. on March 15, 2010, DEVELOPER submitted an application to CITY for Site Plan Review No. 10-001 for the establishment, maintenance and operation of a 154,113 square foot Costco with tire sales/installation center, outside food service, and 16-pump gas station on approximately 8.2 acres of land within the reconfigured General Plan Sub-area 5A and Specific Plan 13 Area A;

6. on June 16, 2010 DEVELOPER submitted an application to CITY for additional development under Site Plan Review No. 10-001 for the establishment, maintenance and operation of 467 multi-family residential units; an additional 30,000 square feet of mixed use retail and restaurants; a shared use of parking, and; a 3'-9" retaining wall along the western boundary to be developed in General Plan Sub-area 5B and Specific Plan 13 Area B (i.e., on the Property);

7. on August 24, 2010, after a duly noticed and conducted public hearing, the Planning Commission of CITY adopted a motion (i) recommending that the City Council approve amendments to the General Plan and Specific Plan 13 (Zoning Text Amendment [ZTA] 10-001 referred to in Recital F.4) and (ii) approving Site Plan Review No. 10-001

with findings and conditions of approval (and subject to a condition of approval stipulating that the Site Plan Review would not become effective until the General Plan Amendment and Zoning Text Amendment were approved by the City Council);

8. on September 20, 2010, the City Council of CITY determined pursuant to CEQA (defined in Section 1 of this Agreement) that the Project EIR prepared and certified for the Original Project adequately addresses all of the environmental impacts of the Original Project, as revised by the application(s) referred to in Recitals E.4, E-5, and E-6, that none of the circumstances warranting the preparation of a Supplemental EIR or Supplement to the previously certified EIR set forth in Public Resources Code Section 21166 and State CEQA Guidelines Section 15162 are present, that minor technical changes or additions to the Project EIR are appropriate, and that, accordingly, an Addendum to the Project EIR is sufficient to comply with CEQA;

9. on September 20, 2010, after a duly noticed and conducted public hearing, the City Council of CITY adopted its Resolution Nos. 2010-67 and 2010-68 approving, respectively, General Plan Amendment (GPA) No. 10-001 and Zoning Text Amendment (ZTA) No. 10-001;

10. on February 23, 2011, after a duly noticed and conducted public hearing, the Planning Commission of CITY approved Tentative Tract Map No. 17261 for condominium purposes with certain findings and conditions of approval;

11. on _____, 2011, following a duly noticed and conducted public hearing, the Planning Commission of CITY recommended to the City Council that it approve this Agreement; and

12. on _____, 2011, after a duly noticed and conducted public hearing, the City Council of CITY adopted its Ordinance No. ____ (hereinafter the "Authorizing Ordinance") finding and determining that this Agreement is consistent with CITY's General Plan and Specific Plan 13 (as amended by GPA No. 10-001 and ZTA No.10-001) and approving and authorizing the execution of this Agreement.

G. Notwithstanding that some of the DEVELOPER and CITY actions referred to in Recital F relate in whole or in part to real property that is outside the boundaries of the Property (i.e., the real property included in General Plan Sub-area 5A and Specific Plan 13 Area A as of the Effective Date), this Agreement is intended to apply solely and exclusively to the Property (i.e., the real property included in General Plan Sub-area 5B and Specific Plan 13 Area B as of the Effective Date).

H. In consideration of the substantial public improvements and benefits to be provided by DEVELOPER and the Project, and in order to strengthen the public planning process and reduce the economic risk of development, by this Agreement CITY intends to provide to DEVELOPER the assurance, subject to all of the terms and conditions of this Agreement, that it can proceed with Development of the Project for the Term of this Agreement pursuant to the terms and conditions of this Agreement and in accordance with the CITY's General Plan and other applicable ordinances, policies, rules, and regulations of CITY and other

governmental agencies having jurisdiction over the Property and the Project existing as of the Effective Date.

I. Pursuant to Section 65867.5 of the California Government Code, i.e., Development Agreement Legislation, the City Council has found and determined that: (i) this Agreement and the Development Plan for the Project are consistent with CITY's General Plan and the Specific Plan applicable to the Property, implement the goals and policies of CITY's General Plan, and provide balanced and diversified land uses and impose appropriate standards and requirements with respect to land development and usage in order to maintain the overall quality of life and the environment within the City of Huntington Beach, (ii) this Agreement is in the best interests of and not detrimental to the public health, safety, and general welfare of CITY and its residents; (iii) adopting this Agreement is consistent with CITY's General Plan and constitutes a present exercise of CITY's police power; and (iv) this Agreement is being entered into pursuant to and in compliance with the requirements of Section 65867 of the Development Agreement Legislation.

AGREEMENT

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Legislation, as it applies to CITY, pursuant to Article XI, Section 2 of the California Constitution, and in consideration of the foregoing recitals of fact, all of which are expressly incorporated into this Agreement, the mutual covenants set forth in this Agreement, and for the further consideration described in this Agreement, the Parties agree as follows:

1. Definitions.

The following words and phrases are used as defined terms throughout this Agreement and each defined term shall have the meaning set forth below:

"AGENCY" means the City of Huntington Beach Redevelopment Agency, a public body, corporate and politic.

"AHA" means that certain Affordable Housing Agreement, dated October 4, 2010, by and between DEVELOPER and AGENCY. AHA as used herein shall mean, refer to and include the AHA, as well as any riders, exhibits, addenda, implementation agreements, amendments and attachments thereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in the AHA. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the AHA.

"Authorizing Ordinance" means Ordinance No. _____ approving this Agreement.

"Block" means no less than one hundred (100) residential units.

"CEQA" means the California Environmental Quality Act (Public Resources Code § 21000 et seq.), the State CEQA Guidelines promulgated by the Secretary for Resources thereunder (California Code of Regulations, § 15000 et seq.), and the local CEQA Guidelines approved or adopted by CITY.

“CITY” means the City of Huntington Beach, a California municipal corporation, duly organized and existing under the Constitution and laws of the State of California.

“City Council” means the duly elected and constituted city council of CITY.

“Construction Codes” means laws and/or regulations governing engineering and construction standards and specifications, including without limitation, uniform building, electrical, energy, fire, housing, mechanical, and plumbing codes that govern construction standards in all jurisdictions throughout the State of California, as the same may be modified from time to time by CITY pursuant to local ordinance, as and to the extent permitted by applicable California law.

“Default” has the meaning ascribed to that term in Section 10.1 or 10.2 of this Agreement, as applicable.

“Develop” or “Development” or “Developing” means the improvement of the Property for purposes consistent with the Development Plan, including, without limitation: subdividing, grading, the construction and installation of the Off-site Public Improvements, the construction of structures and buildings, and the installation of landscaping, all in accordance with the provisions of this Agreement, but does not include the maintenance, repair, reconstruction, or redevelopment of any building, structure, improvement, or facility after the initial construction and completion thereof.

“DEVELOPER” means BTDJM Phase II Associates, LLC, a Delaware limited liability company, and all of its assignees and successors in interest which are expressly permitted by this Agreement.

“DEVELOPER Deed of Trust” means a mortgage, deed of trust, or any other security instrument recorded against the Property or a separate legal parcel or parcels within the Property to secure DEVELOPER’s obligation to repay a loan for the acquisition of the Property (or portion thereof), Development of the Project (or applicable portion thereon), and payment of overhead, financing, marketing, maintenance, and related costs pertaining thereto, including without limitation any amendment or refinancing of a loan provided for such purpose and any permanent or take-out loan relating thereto.

“Development Agreement Legislation” means Sections 65864 through 65869.5 of the California Government Code as it exists as of the Effective Date.

“Development Exactions” means any of the following: (i) any requirement of CITY for the dedication of land (including without limitation through the encumbrance of land with an easement or use restriction in favor of a public agency, the public, or a private non-profit entity); (ii) any requirement of CITY for the construction or installation of public improvements or facilities, whether located on or off of the Property and including without limitation improvements or facilities located on land that is encumbered with an easement or use restriction in favor of a public agency, the public, or a private non-profit entity; (iii) any requirement of CITY that all or any portion of the Property be included in one or more Financing Districts and/or be subject to the payment of any special taxes, assessments, or fees, of whatever amount

and however denominated, in order to provide any such public improvements, facilities, or services in conjunction with Development or to lessen, offset, mitigate, or compensate for the impacts of Development on the environment or other public interests; and (iv) any requirement of CITY imposing any fee or charge, by whatever name called, in addition or in lieu of any of the items listed in clauses (i)-(iii), inclusive, or to mitigate the impacts of the Project on CITY or the community. As used herein, the term "Development Exactions" does not include generally applicable fees or charges imposed by CITY on developers/builders to pay or reimburse CITY for its actual and reasonable administrative and payroll costs incurred in processing and reviewing plans and permits and inspecting work performed in the Development of real property, including without limitation performing required reviews under CEQA.

"Development Plan" means the plan for developing the Project on the Property in accordance with this Agreement, the Development Plan Approvals, and the Future Development Approvals. The Future Development Approvals automatically shall become a part of the Development Plan and shall be included within the scope of DEVELOPER's vested rights provided for in this Agreement (subject to the limitations and exceptions to such vesting rights set forth herein) without the need for any amendment of this Agreement when the same are issued or approved by CITY and become final and effective. Each of the documents memorializing the Development Plan is (or will be) maintained in the official records of CITY and shall be utilized whenever required to interpret or apply this Agreement.

"Development Plan Approvals" means all of the land use, development, and building approvals of the City Council relating to the Property and the Development Plan, including the Future Development Approvals (when the same are issued or approved by CITY and become final and effective). As of the Effective Date of this Agreement, the Development Plan Approvals consist of all of the City Council's actions with respect to the Property referred to in Recital F of this Agreement and, to the extent not inconsistent with the foregoing and to the extent applicable to the Project and the Property and adopted and in effect as of the Effective Date, all other provisions of CITY's General Plan, Zoning Ordinance, Specific Plan 13 and Subdivision Ordinance, and Construction Codes. Notwithstanding any other provision set forth in this Agreement to the contrary, the term Development Plan Approvals is not intended to apply to CITY's actions that pertain solely to real property not included within the boundaries of the 10.40-acre Property described in Recital B and Exhibit "A" hereto, including without limitation the 8.2-acre Costco site within GPA Sub-area 5A and Specific Plan 13 Area A that is referred to in Recital F.5 of this Agreement.

"Effective Date" means the date the Authorizing Ordinance becomes effective.

"End User" means a buyer, assignee, or transferee of one or more individual or subdivided unit(s)/lot(s) of the Property obtaining such unit(s) or lot(s) for the purpose of occupying or using such lots or units for its own purposes and not for use in the trade or business of further development, subdivision, or sale. The term "End User" includes, but is not limited to, any homeowner's association, merchants' association, or like entity formed with respect to any portion of the Property which owns some interest in the Property, homeowners, tenants, commercial building owners, and owners of multi-family residential units.

"For-Sale Park Fee" means the park and dedication in-lieu fees required by Section

254.08 of the Huntington Beach Zoning and Subdivision Ordinance and City Council resolution in effect at the time that Developer sells a Condo Unit in accordance with Section 5.1.2.

“Future Development Approvals” means those permits and approvals that DEVELOPER must obtain from CITY after the Effective Date of this Agreement as a prerequisite to its right to develop and use the Property and the Project in accordance with this Agreement, including without limitation one or more tentative tract or parcel maps, final tract or parcel maps, condominium plans/maps, use permits, variances, grading/excavation permits, building permits, and occupancy permits.

“Off-Site Public Improvements” means repair of curb, gutter and sidewalk, and repaving of Center Street, in the areas designated in Exhibit “C”, attached hereto and made a part hereof (“Paving Work Areas”).

“On-Site Improvements” means physical infrastructure improvements or facilities that are or will be located on the Property. Certain On-Site Improvements may be specifically addressed in this Agreement.

“Party” means either CITY or DEVELOPER, as the context dictates, and “Parties” means CITY and DEVELOPER.

“Planning Commission” means the duly appointed and constituted planning commission of CITY.

“Project” means the development on the Property that is referred to in Recitals C and F and the definition of “Development Plan.” As used in this Agreement, the term “Project” expressly excludes development of the real property located in General Plan Sub-area 5A and Specific Plan 13 Area A as of the Effective Date.

“Project EIR” means that certain environmental impact report certified by the City Council of CITY prior to the Effective Date of this Agreement that is referred to in Recital F.1 above, including without limitation the adopted Mitigation Monitoring Program for the Project approved in conjunction therewith and the Addendum to the Project EIR that was considered by the City Council of CITY and is referred to in Recitals F.7 and F.8 above.

“Property” means the real property described in Recital B and Exhibit “A” attached hereto. The term “Property” does not include General Plan Sub-area 5A or Specific Plan 13 Area A, as the same were re-configured by the City Council actions referred to in Recital F.8 above.

“Rental Park Fee” means the park fees required by Section 230.20 of the Huntington Beach Zoning and Subdivision Ordinance and City Council resolution in effect at the time that Developer obtains a building permit for any Block of Rental Units in accordance with Section 5.1.1.

“Term” means the period of time that this Agreement remains in effect with respect to the Property or any portion thereof, as provided in Section 2.3.

“Transfer” has the meaning ascribed to that term in Section 2.4.1 of this Agreement.

2. General Provisions.

2.1 Binding Covenants. To the maximum extent permitted by law, the provisions of this Agreement shall constitute covenants which shall run with the Property for the benefit thereof, and the benefits and burdens of this Agreement shall bind and inure to the benefit of the Parties and all permitted successors in interest to the Parties hereto.

2.2 Interest of DEVELOPER. As of the date this Agreement is being executed by the Parties, DEVELOPER represents that it is the legal owner of the Property.

2.3 Term. This Agreement shall remain in effect during the Term. As used herein, the “Term” shall mean the period of time commencing upon the Effective Date and terminating at 11:59 PM on the tenth (10th) anniversary of the Effective Date; subject, however, to the following exceptions: (i) nothing in this Section 2.3 is intended to limit or restrict CITY’s right to terminate this Agreement at an earlier time pursuant to Section 10.6, if applicable; (ii) if a referendum petition challenging CITY’s approval of this Agreement or any of the Development Plan Approvals approved by CITY on or before the Effective Date is qualified for the ballot, the last day of the Term of this Agreement shall be extended by the number of days between the thirtieth (30th) day after the Effective Date and the date that the results of the referendum election are certified denying said challenge and upholding the validity and enforceability of this Agreement or said challenged Development Plan Approval(s); (iii) if a lawsuit is filed challenging the validity or enforceability of this Agreement or any of the Development Plan Approvals approved by CITY on or before the Effective Date, the last day of the Term of this Agreement shall be extended by the number of days between the thirtieth (30th) day after the Effective Date and the date that the lawsuit is dismissed with prejudice (and the time for any appeal of said dismissal has expired), a final binding written settlement agreement is executed by all parties to the litigation that upholds the validity and enforceability of this Agreement and all of the Development Plan Approvals challenged in said lawsuit, or a final non-appealable judgment is entered in said lawsuit that upholds the validity and enforceability of this Agreement and all of the Development Plan Approvals challenged in said lawsuit; (iv) DEVELOPER’s indemnity obligation set forth in the first sentence of Section 6 shall remain in effect and shall apply to any claims arising prior to the otherwise applicable expiration date or termination date of this Agreement until said indemnity obligation has been fully performed and DEVELOPER’s indemnity obligation set forth in the last sentence of Section 6 shall commence immediately upon the full execution and delivery of this Agreement, prior to the Effective Date; (v) except with respect to DEVELOPER’s rights and obligations set forth in Sections 3.1.3.3, 3.1.3.6, 4.1.4, 4.1.5, 4.1.6, and 5.1 (including all subsections), which shall survive and remain in effect for the full ten (10) year term set forth herein, as said 10-year term may be extended or shortened in accordance with clauses (i)-(iii) of this sentence, this Agreement shall terminate as to any separate legal lot(s) or parcel(s) within the Property upon which residential units are constructed upon completion of Development with respect to said lot(s) or parcel(s) pursuant to the terms of this Agreement and CITY’s issuance of all required occupancy permits or final inspections, as applicable, and acceptance of all dedications and improvements required to complete such Development; (vi) except with respect to DEVELOPER’s rights and obligations set forth in

Sections 3.1.3.3, 3.1.3.6, 4.1.4, 4.1.5, 4.1.6, and 5.1 (including all subsections), which shall survive and remain in effect for the full ten (10) year term set forth herein, as said 10-year term may be extended or shortened in accordance with clauses (i)-(iii) of this sentence, this Agreement shall terminate as to any non-residential lot(s) or parcel(s) within the Property, upon the completion of Development with respect to said lot(s) or parcel(s) pursuant to the terms of this Agreement and CITY's issuance of all required occupancy permits or final inspections, as applicable, and acceptance of all dedications and improvements required to complete such Development; and (vii) if a court of competent jurisdiction issues a final non-appealable judgment or order invalidating this Agreement or declaring this Agreement to be unenforceable the Term of this Agreement shall expire on the date said judgment or order becomes final.

The termination of this Agreement in its entirety or with respect to a particular lot(s) or parcel(s) shall not affect any right or duty of DEVELOPER arising from a source other than this Agreement.

In the event this Agreement terminates in its entirety or with respect to a particular lot(s) or parcel(s), and notwithstanding any other provision set forth herein, upon request by DEVELOPER, City, any End User, or any other permitted successor or assignee of either of them, CITY shall cooperate, at no cost to CITY, in executing in recordable form a document prepared by the requesting party that confirms the termination of this Agreement with respect to the Property or applicable portion thereof.

In the event this Agreement terminates in its entirety or with respect to a particular lot(s) or parcel(s), and notwithstanding any other provision set forth herein, DEVELOPER AGREES that it is not entitled to any damages from the City as further provided herein.

2.4 Transfers and Assignments.

2.4.1 Restrictions on DEVELOPER's Right to Assign. The qualifications and identities of the persons and entities comprising DEVELOPER are of particular concern to CITY. It is because of these qualifications and identities of the persons and entities comprising DEVELOPER that CITY is entering into this Agreement with DEVELOPER. Accordingly, prior to the termination of this Agreement with respect to any separate legal lot or parcel within the Property, DEVELOPER shall not, without the prior written approval of CITY, voluntarily or involuntarily do any of the following (collectively, a "Transfer"): (i) transfer or assign or make any total or partial conveyance of the Property; (ii) transfer or assign all or any part of DEVELOPER's rights or obligations set forth in this Agreement with respect to the Property; (iii) authorize or permit a change in the ownership, management, or control of DEVELOPER (which, for purposes of this Agreement, shall be defined to mean a transfer of either (A) more than twenty-five percent (25%) of the beneficial ownership interest in DEVELOPER as of the Effective Date or (B) in the event DEVELOPER is or becomes a limited liability company or a general or limited partnership, a transfer of the identity of the member or partner with management responsibility for DEVELOPER; or (iv) authorize or permit any voluntary or involuntary successor in interest of DEVELOPER to acquire any rights or powers under this Agreement with respect to said lot or parcel.

Notwithstanding the foregoing, the following shall not be considered to be a Transfer and

shall not require CITY approval for any purpose under this Agreement: (i) a transfer or assignment to any entity or entities in which DEVELOPER or any combination of persons or entities directly or indirectly owning a minimum of fifty-one percent (51%) of the beneficial interest in DEVELOPER as of the Effective Date directly or indirectly maintains a minimum of fifty-one percent (51%) of the ownership interest and management control; (ii) transfers of stock in a publicly traded corporation or the ownership interests in any real estate investment trust; (iii) transfers in trust for the benefit of family members; (iv) transfers occurring due to the death or mental or physical incapacity of the transferor; (v) a transfer for financing purposes to the holder of a DEVELOPER Deed of Trust; (vi) a sale, conveyance, or transfer of the applicable lot(s) or parcel(s) at foreclosure or a conveyance thereof in lieu of a foreclosure pursuant to a foreclosure thereof by the holder of any DEVELOPER Deed of Trust; and (vii) the sale, ground lease, or lease of a lot or parcel within the Property, or a building or portion of a building situated thereon, to an End User, provided that the closing date for any such sale or the commencement date for any such lease, as applicable, does not occur until after DEVELOPER completes construction of the Off-Site Public Improvements and the portion of the Project situated thereon (excluding any minor non-life safety "punch list" items and, with respect to any non-residential lots or parcels, any tenant improvements).

DEVELOPER shall deliver written notice to CITY requesting approval of any Transfer that requires CITY approval hereunder. CITY shall not unreasonably withhold, condition, or delay any such approval. In the event CITY desires that DEVELOPER submit information to CITY to assist CITY in making its decision, CITY shall notify DEVELOPER what information is so desired within ten (10) business days after receipt of DEVELOPER's request for approval and DEVELOPER shall furnish the requested information to CITY at no expense to CITY. In considering whether it will grant approval to any such Transfer, CITY shall consider such factors as (i) the financial strength and capability of the proposed assignee/transferee to perform DEVELOPER's then executory obligations hereunder and (ii) the proposed assignee/transferee's experience and expertise in the planning, financing, and development of similar projects. No Transfer, including an assignment or transfer pursuant to clause (i) of the preceding paragraph which does not require CITY approval hereunder, but excluding assignments and transfers pursuant to clauses (ii)-(vi) of the preceding paragraph, shall be effective unless and until the proposed assignee/transferee executes and delivers to CITY an agreement in a form reasonably satisfactory to the City Attorney of CITY assuming the obligations of the assignor/transferor which have been assigned. As of the effective date of any such permitted assignment or transfer, the assignor shall be released from any further liability to CITY under this Agreement and CITY agrees to cooperate with the assignor in executing any documents that may be reasonably requested by the assignor to confirm such release.

2.4.2 CITY's Fee. DEVELOPER agrees to reimburse CITY for CITY's reasonable costs and attorneys' fees incurred in connection with the processing and documentation of any requested Transfer which requires CITY's approval hereunder, in an amount not to exceed Two Thousand Five Hundred Dollars (\$2,500.00) for each Transfer (which amount shall be adjusted by the escalation in the Consumer Price Index from the Effective Date of this Agreement to the date of the request for Transfer).

2.4.3 No Waiver. The acceptance by CITY of any payment due hereunder from

any other person shall not be deemed to be a waiver by CITY of any provision of this Agreement or to be a consent to any Transfer. Consent by CITY to one or more Transfers of this Agreement shall not operate as a waiver or estoppel to the future enforcement by CITY of its rights pursuant to the provisions of this Agreement.

2.4.4 Rights of Successors and Assigns. During the Term of this Agreement, any and all permitted successors and assignees of DEVELOPER shall have all of the same rights, benefits, and obligations of DEVELOPER under this Agreement.

3. Development Provisions.

3.1 Vesting.

3.1.1 Project. Subject to all of the terms and conditions of this Agreement, CITY covenants that DEVELOPER has and shall have the vested right to develop the Project on the Property consistent with the Development Plan and the Development Plan Approvals. Except as expressly set forth in this Agreement, including without limitation Section 3.2 hereof, DEVELOPER's vested rights set forth in this Agreement shall apply to and supersede any inconsistent or conflicting CITY action taken after the Effective Date of this Agreement, whether such action is taken by the City Council, a commission, board, agency, official, employee, or agent of CITY, or by CITY's voters by means of their reserved power of initiative. It is understood and agreed that CITY and AGENCY are separate public agencies and that CITY's covenants set forth herein are not intended to be and are not binding on AGENCY.

3.1.2 Limits on Development. The California Supreme Court held in *Pardee Construction Company v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties to address certain limits on a city's ability to condition, restrict, or regulate a development allowed a later-adopted initiative to restrict the development. This Agreement is intended to cure that deficiency by expressly addressing the timing for the Development, the vested rights afforded by this Agreement, and the scope of CITY's reserved authority described in Section 3.2 hereof. In this regard, DEVELOPER shall have the vested right to Develop the various components of the Project and at such time as DEVELOPER deems appropriate within the exercise of its subjective business judgment, subject to any restrictions on such matters as may be set forth in the Development Plan and Development Plan Approvals and the express terms and conditions set forth in this Agreement. No future amendment of any CITY law and no future adoption of any CITY law or other action that purport to limit the scope or timing of Development of the Project in a manner inconsistent with the foregoing, whether the same are adopted or imposed by the City Council or through the initiative or referendum process, shall apply to the Property. In particular, but not by way of limitation of the foregoing, no numerical restriction on the number of residential building permits or on the amount of non-residential development adopted or approved by CITY after the Effective Date of this Agreement, whether by the City Council or by CITY's voters through the initiative or referendum process, shall apply to the Property or the Project during the Term of this Agreement. Notwithstanding the foregoing, nothing in this Section 3.1 shall limit or restrict CITY's reserved authority as described in Section 3.2.

3.1.3 Entitlements, Permits, and Approvals - Cooperation.

3.1.3.1 Processing. CITY agrees that it shall process, pursuant to CITY's regular procedures, complete applications for the Future Development Approvals and, if applicable, complete applications for amendments to this Agreement, to the Development Plan Approvals, and to any of the Future Development Approvals (after the same have been initially approved).

3.1.3.2 Other Permits. CITY further agrees to reasonably cooperate with DEVELOPER, at no cost to CITY, in securing any County, State, and Federal permits or authorizations which may be required in connection with Development of the Property that are consistent with the Development Plan and Development Plan Approvals; provided, that nothing in this Section 3.1.3.2 shall be deemed to require CITY's assumption of any obligations under any said permits or authorizations.

3.1.3.3 Tentative Map Extensions. Pursuant to the provisions of Section 66452.6(a) of the Government Code, any tentative subdivision map or tentative parcel map approved in connection with development of the Property shall remain in full force and effect for the greater of (i) the Term of this Agreement or (ii) the maximum term for such map permitted under Section 66452.6 of the Government Code. CITY agrees that any extension of a map authorized by this Agreement shall occur automatically upon the date any such map would otherwise expire and that DEVELOPER shall not be required to submit an application or any other request to CITY for any such extension to occur or to be valid and enforceable.

3.1.3.4 Vesting Tentative Maps. If any tentative or final subdivision or parcel map approved in connection with Development of the Property is a vesting map under the Subdivision Map Act (Government Code Section 66410 et seq.) and if this Agreement is determined by a final judgment to be invalid or unenforceable insofar as it grants a vested right to DEVELOPER to Develop the Project, then and to that extent the rights and protections afforded to DEVELOPER under the laws and ordinances applicable to vesting maps shall supersede the provisions of this Agreement to the maximum extent permitted by law. Except as set forth immediately above, the provisions of this Agreement shall be controlling over any conflicting provision of law or ordinance concerning vesting maps.

3.1.3.5 Lot Line Adjustments. Adjustments to lot lines required for purposes beneficial to the Project shall be processed on an "administrative approval" basis only; provided, however, that nothing herein shall be deemed to allow an amendment to any specific plan boundary(ies) through an administrative approval.

3.1.3.6 Multiple Final Maps. Subject to Section 5.1 (including all subsections) hereof, CITY agrees that, pursuant to the provisions of Section 66463.1 of the Government Code, DEVELOPER may file concurrently or consecutively one or more final maps relating to the Property and any tentative tract or parcel map; provided, however that each map shall apply to no less than a Block.

3.1.3.7 Intentionally Omitted.

3.1.3.8 Processing of Future Development Approvals. City shall cooperate in good faith with DEVELOPER and process DEVELOPER's applications for the Future Development Approvals as long as such applications are consistent with the Development Plan, the Development Plan Approvals, and the terms and conditions set forth in this Agreement. At such time that a Future Development Approval is approved, that Future Development Approval shall constitute for all purposes a Development Plan Approval hereunder.

3.2 Reserved Authority.

3.2.1 Future Changes in Development Exactions; Conditions on Future Development Approvals. Notwithstanding any other provision set forth in this Agreement to the contrary, in addition to and without limiting the rights of CITY in Sections 3.2.2, 3.2.3, and 3.2.4, CITY reserves the right after the Effective Date of this Agreement to (i) change its Development Exactions applicable to the Property and the Project and to impose conditions under CEQA on any required Future Development Approvals in order to mitigate the Project's significant impacts on the environment, if any, and (ii) require payment of any fees required by any county, state or federal regulations and/or statutes that are applicable to the Property and the Project ("Non-City Fees"), subject to the following limitations:

(i) except for any Non-City Fees, no such future changes in any of CITY's Development Exactions or conditions on any required Future Development Approvals applicable to the Project shall be inconsistent with the Development Plan Approvals or this Agreement, nor shall any such future changes materially jeopardize or impair the rights of DEVELOPER thereunder;

(ii) No change in or increase to any Development Exactions applicable to the Property and no conditions placed on any Future Development Approvals shall apply to the Property except to the extent the same shall be applicable to similarly situated properties or projects on a citywide or areawide basis; and

(iii) except for any Non-City Fees, CITY shall not require the Project or the Property to pay or contribute to Development Exactions that are not in effect as of the Effective Date with respect to the affected portion of the Property.

3.2.2 Construction Codes. This Agreement shall not prevent CITY from applying to the Project new or amended Construction Codes and other new or amended codes relating to fire protection, water quality, wastewater, and other public health and safety measures that are adopted or made applicable to the Property after the Effective Date of this Agreement or local amendments to such codes, as long as the same standards and requirements set forth in any such new or amended codes or local amendments thereto are applicable to all similarly situated developments within the City of Huntington Beach.

3.2.3 State and Federal Laws and Regulations. DEVELOPER shall comply with all applicable state and federal laws and regulations, provided that nothing in this Agreement shall be deemed to limit or restrict the right of DEVELOPER to contest or challenge the validity of any such laws or regulations or their applicability to the Property or the Project.

3.2.4 Suspension of Development in Order to Protect Health and Safety. Nothing in this Agreement shall be construed to be in derogation of CITY's police power to suspend the right of DEVELOPER to develop all or any portion of the Project in order to protect the public health and safety (e.g., in the event of the unavailability of adequate water, wastewater treatment, or storm drainage facilities). In the event that CITY determines that the public health or safety require a suspension of DEVELOPER's right to develop all or any portion of the Project, the scope of the suspension shall be limited to the extent determined by CITY to be reasonably necessary to protect the public health or safety, and the term of the suspension shall be limited to the period of time during which the public health or safety concern continues.

3.3 Amendment of Development Agreement.

3.3.1 Initiation of Amendment. Either Party may propose an amendment to this Agreement; provided, however, that no agreements or modifications shall apply to or be binding upon the Property or separate legal parcel(s) within the Property unless the same shall have been set forth in writing and approved and executed both by CITY and the fee owner(s) of the affected parcel(s).

3.3.2 Procedure. The procedure for proposing and adopting an amendment to this Agreement shall be the same as the procedure required for entering into this Agreement in the first instance.

3.3.3 Consent. Any amendment to this Agreement shall require the written consent of all affected Parties. A Party shall not be deemed to be an affected Party for purposes of this Section 3.3.3 unless the amendment to this Agreement alters, jeopardizes, or impairs the rights or obligations of said Party. No amendment to all or any provision of this Agreement shall be effective unless set forth in writing and signed by the duly authorized representatives of all affected Parties.

4. Public Benefits.

4.1 Public Benefits. In consideration for the vesting rights accorded to DEVELOPER under Section 3 hereof, the Project/DEVELOPER shall provide the following extraordinary benefits to the public (the "Public Benefits"):

4.1.1 DEVELOPER shall construct/install the Off-Site Public Improvements prior to occupancy of the first residential unit within the Project; provided, however, that if the first residential unit within the Project is not occupied by the third (3rd) anniversary of the Effective Date of this Agreement, DEVELOPER may defer completion of the Off-Site Public Improvements to a time no later than prior to occupancy of the first residential unit within the Project by filing, no later than three (3) years from the Effective Date of this Agreement ("Deadline"), a performance bond from a California licensed surety with rating not less than [rating] in the amount of 100% of the estimated construction cost of the Off-Site Public Improvements and a labor and materials bond from a California licensed surety with rating not less than [rating] in the amount of 50% of the estimated construction costs of the Off-Site Public Improvements (collectively, "the Bonds"). The Bonds shall name CITY as obligee. CITY may act on the Bond, in its sole and absolute discretion, if the Off-Site Public Improvements are not

completed by the Deadline. The Off-Site Public Improvements shall be completed in accordance with the provisions of Chapter 255 of the City's Zoning Code, as the same may be amended during the Term.

4.1.2 DEVELOPER shall deposit with the Agency, if the AHA is in effect, or the City, if the AHA is not in effect, the amount of TWO HUNDRED AND FIFTY THOUSAND DOLLARS AND NO CENTS (\$250,000)("Deposit"), which shall be used to pay for the City's and/or any responsible party's costs of planning, design, permits, and construction of a certain pedestrian path between the Property and the Levitz Parcel (referenced hereinafter as "the Pedestrian Path") as indicated in the Site Plan in Exhibit "D" attached hereto and made a part hereof. The Deposit shall be due and payable during the Term of this Agreement no later than fifteen (15) days after the latest of the following dates: (i) site control necessary to allow for construction/installation and operation of the Pedestrian Path is obtained; (ii) CITY's issuance of the first building permit for Development of the Levitz Parcel; and (iii) CITY's delivery of written notice to DEVELOPER that the conditions to payment of the Deposit in clauses (i)-(ii), inclusive, have been satisfied and payment of the Deposit is due. Developer shall be entitled to reimbursement for any unspent portion of the Deposit if construction of the Pedestrian Path has not commenced prior to the end of the Term.

5. Miscellaneous Obligations of the Parties.

5.1 Park Fee and Future Condominium Sale Issues.

Pursuant to Sections 3.1.3.3 and 3.1.3.6 of this Agreement and otherwise applicable provisions of law, DEVELOPER has advised CITY that it intends to develop the residential units within the Project to condominium standards ("Condo Project"), record a final map for a common interest development, initially rent the residential units, and thereafter create the common interest development pursuant to California Civil Code Section 1352 (through recordation of a declaration and a condominium plan) and sell the condominium units to third party purchasers, with the timing of DEVELOPER's creation of the common interest development and such sale program depending upon future market conditions that DEVELOPER cannot predict at this time. During the Term of this Agreement, DEVELOPER reserves the right in its sole and absolute discretion to determine when, if at all, it will create a common interest development and commence the sale of condominium units. The CITY makes no representation as to the legal effect of such proposed development and/or steps necessary to effectuate said property use and sale. DEVELOPER shall submit the declaration and condominium plan to the City for its written approval no less than ninety (90) days prior to recordation. The contents of the declaration shall conform to the requirements set forth in California Civil Code section 1353. The CITY's written approval shall not be unreasonably withheld. The CITY's failure to provide a written approval within ninety (90) days shall be deemed as an approval. The CITY's approval rights shall survive termination of this Agreement. The requirement that DEVELOPER submit the declaration and condominium plan to the City for its written approval no less than ninety (90) days prior to recordation is also a condition to Tentative Tract Map No. 17261.

5.1.1 Payment of Rental Park Fees Upon Issuance of Building Permits. The Parties agree that, subject to Section 5.1.2, DEVELOPER shall pay to City the Rental Park Fee as a condition to issuance of any building permit for a Block or Blocks of residential dwelling

units within the Condo Project which shall be initially rented upon completion of construction ("Rental Units"). The amount of the Rental Park Fee shall be based upon the number of Rental Units that are authorized by the building permit that is being issued.

5.1.2 Payment of For-Sale Project Park Fees Upon Sale of Condo Units. The Parties further agree that after DEVELOPER creates a common interest development for one or more Blocks of residential units within the Condo Project (referenced hereinafter as "Condo Units") and thereafter commences to sell one or more Condo Units within a Block or Blocks of the Condo Project, prior to and as a condition to DEVELOPER's right to sell any of the Condo Units within said Block or Blocks, and in the event that For-Sale Park Fees are greater than the Rental Park Fees paid by Developer for said Block or Blocks, DEVELOPER shall pay to CITY the difference, if any, between the applicable For-Sale Project Park Fee then in effect at the time of DEVELOPER'S first sale of one or more of the Condo Units and the Rental Project Park Fee previously paid to CITY for the corresponding Rental Units within said Block(s) (collectively, the "Owed Fees"); provided, however, that DEVELOPER shall either (i) pay all Owed Fees, if any, no later than the date that is six (6) months prior to the end of the Term, or (ii) record such documents as are legally required to rescind and terminate the creation of the common interest development for the applicable Block(s) of the Condo Project for which the Owed Fees have not been paid (collectively, the "Map for Rental Units") to reflect the conversion from Condo Units to rental units and, in such event, the Map for Rental Units shall be approved by City and recorded no later than (30) days prior to the end of the Term. Notwithstanding the foregoing, if at the time DEVELOPER pays the Rental Project Park Fee the applicable Rental Project Park Fee and the For-Sale Project Park Fee are the same, it shall be conclusively presumed that DEVELOPER's payment of the Rental Project Park Fee pursuant to Section 5.1.1 constitutes complete satisfaction of DEVELOPER's park fee obligation and no Owed Fees shall be due or payable. In the event that the For-Sale Park Fees are less than the Rental Park Fees paid by Developer at the time of the issuance of a building permit for any Block or Blocks, Developer shall not be entitled to any reimbursement of Rental Park Fees paid by Developer. Developer's payment of Owed Fees shall be determined on a Block basis, regardless of the actual number Condo Units sold within a Block. So, for example, if Developer sells only one unit within a Block, the Owed Fees would be for the entire Block.

5.1.3 Security for Owed Fees. To secure payment of the Owed Fees, if any, and any indemnity afforded under Section 5.1.5 hereof, DEVELOPER hereby grants a security interest in and to any payments required to be made to DEVELOPER under the AHA, as set forth in the Assignment of Payments attached hereto as Exhibit "E," which shall be executed concurrently with this Agreement and made a part hereof.

5.1.4 Applicable Conversion Regulations. If DEVELOPER creates a common interest development for the Condo Project and sells Condo Units, DEVELOPER shall comply with all requirements deemed "Applicable" in Exhibit "F", attached hereto and made a part hereof, including any modifications to such requirements as set forth in Exhibit "F"; provided, however, that if the initial rental and occupancy of the Rental Units within a block does not begin until after creation of the common interest development pursuant to California Civil Code Section 1352 and inclusion of such Rentals Units in said common interest development, then DEVELOPER shall only be required to comply with California Government Code Section

66459.

5.1.5 Indemnity and Payment of Fees in the Event of Successful Challenge. In addition to any other indemnities provided by DEVELOPER under this Agreement, DEVELOPER shall indemnify CITY for any fees and costs, including without limitation attorneys' fees and court costs, resulting from DEVELOPER's failure to comply with state and/or federal relocation and/or noticing requirements related to the Condo Project. In the event of a successful challenge to this Agreement, based upon deferment of payment of fees granted by CITY to DEVELOPER under Section 5.1 hereof, DEVELOPER shall pay all Owed Fees then in effect upon the recording of the final map for the Condo Project or any portion thereof.

5.1.6 No Waiver. The Parties acknowledge and agree that this paragraph is intended to interpret and apply existing law and does not constitute a waiver or reduction of DEVELOPER's fee obligation to pay park fees.

6. Indemnification.

Except to the extent of the gross negligence or willful misconduct of CITY and its agents, officers, contractors, attorneys, and employees (the "Indemnified Parties"), DEVELOPER shall indemnify, defend, and hold harmless the Indemnified Parties from and against each and every claim, action, proceeding, cost, fee, legal cost, damage, award or liability of any nature arising from damages or claims for damages which arise from the acts or omissions of DEVELOPER or any of its contractors, subcontractors, agents, employees or other persons acting on DEVELOPER's behalf in connection with the Project. The duties of DEVELOPER under this Section 6 are solely subject to and conditioned upon an Indemnified Party's written request to DEVELOPER to defend and/or indemnify such Indemnified Party. Without in any way limiting the provisions of this Section 6, the Parties hereto agree that this Section 6 shall be interpreted in accordance with the provisions of California Civil Code Section 2778 in effect as of the Effective Date. DEVELOPER further agrees, as a condition of approval of this Agreement, to indemnify, defend and hold harmless, at DEVELOPER's expense, the Indemnified Parties from and against any claim, action, proceeding, cost, fee, legal cost, damage, award, or liability of any nature arising from claim, action, or proceeding initiated by a third party to attack, review, set aside, void, or annul the approval of this Agreement or any of the Development Plan Approvals or to determine the legality or validity of any provision hereof or obligation contained herein.

7. Relationship of Parties.

The contractual relationship between CITY and DEVELOPER is such that DEVELOPER is an independent contractor and not an agent or employee of CITY. CITY and DEVELOPER hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained in this Agreement or in any document executed in connection with the Property shall be construed as making CITY and DEVELOPER joint venturers or partners.

8. Amendment or Cancellation of Agreement.

Without limiting Section 10, this Agreement may be amended or canceled in whole or in part only by mutual consent of the Parties in the manner provided for in Government Code

Section 65868. No amendment or modification of this Agreement or any provision hereof shall be effective unless set forth in writing and signed by duly authorized representatives of each Party hereto. This provision shall not limit any Party's remedies as provided by Section 10.

9. Periodic Review of Compliance with Agreement.

9.1 Periodic Review. CITY and DEVELOPER shall review this Agreement at least once every 12-month period from the date this Agreement is executed. CITY shall notify DEVELOPER in writing of the date for review at least thirty (30) days prior thereto. Such periodic review shall be conducted in accordance with Government Code Section 65865.1.

9.2 Good Faith Compliance. During each periodic review, DEVELOPER shall be required to demonstrate good faith compliance with the terms of this Agreement. DEVELOPER agrees to furnish such reasonable evidence of good faith compliance as CITY, in the exercise of its reasonable discretion, may require. If requested by DEVELOPER, CITY agrees to provide to DEVELOPER a certificate that DEVELOPER is in compliance with the terms of this Agreement, provided DEVELOPER reimburses CITY for all reasonable and direct costs and fees incurred by CITY with respect thereto.

9.3 Failure to Conduct Annual Review. Provided that such failure is not through any fault of DEVELOPER, the failure of CITY to conduct the annual review shall not be a Default by DEVELOPER, nor shall any such failure alter, suspend, or terminate either of the Parties' other rights and obligations hereunder. Further, DEVELOPER shall not be entitled to any remedy for a failure by CITY to conduct this annual review.

9.4 Initiation of Review by City Council. In addition to the annual review, the City Council may at any time initiate a review of this Agreement by giving written notice to DEVELOPER. Within thirty (30) days following receipt of such notice, DEVELOPER shall submit evidence to the City Council of DEVELOPER good faith compliance with this Agreement and such review and determination shall proceed in the same manner as is provided in Sections 9.1 and 9.2 and the Development Agreement Legislation for the annual review. The City Council shall initiate its review pursuant to this Section 9.4 only if it has probable cause to believe CITY's general health or safety is at risk as a result of specific acts or failures to act by DEVELOPER.

9.5 Administration of Agreement. Any final decision by the CITY's staff concerning the interpretation and administration of this Agreement and Development of the Property in accordance herewith may be appealed by DEVELOPER to the City Council, provided that any such appeal shall be filed with the City Clerk within ten (10) days DEVELOPER receives written notice that the staff decision is final. The City Council shall render, at a noticed public hearing, its decision to affirm, reverse, or modify the staff decision within thirty (30) days after the appeal is so filed.

10. Events of Default: Remedies and Termination.

10.1 Default. Subject to Section 10.2, failure by any Party to perform any term or provision of this Agreement required to be performed by such Party shall constitute an event of

default ("Default"). For purposes of this Agreement, a Party claiming another Party is in Default shall be referred to as the "Complaining Party" and the Party alleged to be in default shall be referred to as the "Party in Default." A Complaining Party shall not exercise any of its remedies as the result of such Default unless it first gives notice to the Party in Default as provided in Section 10.2 and the Party in Default fails to cure such Default within the applicable cure period. The parties acknowledge that the City would not have entered into this Development Agreement had it been exposed to damage claims from Developer for any breach or default thereof. As such, the parties agree that in no event shall Developer be entitled to recover damages against City for breach or default of this Development Agreement.

10.2 Procedure Regarding Defaults.

10.2.1 Notice Required. The Complaining Party shall give written notice of Default to the Party in Default, specifying the Default complained of by the Complaining Party. Delay in giving such notice shall not constitute a waiver of any Default nor shall it change the time of Default.

10.3 Right to Cure. The Party in Default shall diligently endeavor to cure, correct, or remedy the matter complained of, provided such cure, correction, or remedy shall be completed within the applicable time period set forth herein after receipt of written notice (or such additional time as may be deemed by the Complaining Party to be reasonably necessary to correct the matter).

10.4 Delay Not a Waiver. Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies. Delays by a Complaining Party in asserting any of its rights and remedies shall not deprive the Complaining Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

10.5 Time to Cure. If a Default occurs, prior to exercising any remedies, the Complaining Party shall give the Party in Default written notice of such Default. If the Default is reasonably capable of being cured within thirty (30) days, the Party in Default shall have such period to effect a cure prior to exercise of remedies by the Complaining Party. If the nature of the alleged Default is such that it cannot practicably be cured within such 30 day period, the cure shall be deemed to have occurred within such 30 day period if (i) the cure is commenced at the earliest practicable date following receipt of the notice; (ii) the cure is diligently prosecuted to completion at all times thereafter; (iii) at the earliest practicable date (in no event later than 30 days after the curing Party's receipt of the notice), the curing Party provides written notice to the other Party that the cure cannot practicably be completed within such 30 day period; and (iv) the cure is completed at the earliest practicable date. In no event shall the Complaining Party be precluded from exercising remedies if a Default is not cured within one hundred eighty (180) days after the first notice of Default is given.

10.6 Termination of Agreement. Subject to the foregoing, if a Party in Default fails to cure a Default in accordance with the foregoing, the Complaining Party, at its option, may terminate this Agreement, and/or institute legal proceedings pursuant to this Agreement.

10.7 Default During Annual Review. Without limitation, evidence of a Default may arise in the course of the regularly scheduled annual review described in Section 8 of this Agreement.

10.8 Institution of Legal Actions. Subject to the provisions of Sections 10.1 and 10.2 relating to notices of Default and times to cure and the provisions of Sections 10.9 and 10.10 limiting certain remedies of the Party in Default, in addition to any other rights or remedies it may have, either Party to this Agreement may institute legal action to cure, correct, or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation hereof, or to obtain any other remedies consistent with this Agreement except that DEVELOPER shall have no damages remedies against CITY.

10.9 Limitation on Damages Remedy Against Developer. Notwithstanding any other provision set forth in this Agreement to the contrary, in no event shall CITY be entitled to recover as an element of its damages for a DEVELOPER Default any amount to compensate it for "lost" anticipated tax revenues of any kind (whether property taxes, property tax increment revenues, sales taxes, business license fees, or otherwise) resulting from DEVELOPER's delay in completion of the Project or its decision not to proceed to Develop or all a portion of the Project.

10.10 No Damages Relief Against City. Developer acknowledges that the City would not have entered into this Agreement if the City were to be liable in damages under or with respect to this Agreement or the application thereof. Consequently, and except for the payment of attorneys' fees and other litigation expenses, in accordance with Section 13, the City shall not be liable in damages to Developer or to any successor in interest to Developer, and Developer covenants on behalf of itself and its successors in interest not to sue for or claim any damages:

- (i) for any non-monetary Default of, or which arises out of, this Agreement;
- (ii) for the taking, impairment or restriction of any right or interest conveyed or provided hereunder or pursuant hereto; or
- (iii) arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

10.11 Limitation on Cross-Defaults. In the event the legal parcels comprising the Property are from time to time owned by more than one person or legal entity (each a "DEVELOPER" hereunder), each DEVELOPER shall be jointly and severally liable to CITY for completion of the obligations set forth under 4.1.4, 4.1.5, 4.1.6, and 5.1 (including all subsections), hereof. Otherwise, however, a DEVELOPER shall be obligated to CITY to perform only those obligations set forth in this Agreement that pertain to the separate legal parcel(s) owned by that particular DEVELOPER and in the event another DEVELOPER is in Default hereunder with respect to another separate legal parcel(s) comprising another part of the Property CITY's rights and remedies hereunder (including without limitation the remedy to terminate this Agreement and/or seek legal or equitable relief) shall be limited to the

DEVELOPER and the portion of the Property as to which such Default exists.

10.12 Estoppel Certificates. Either Party or the holder or prospective holder of a mortgage or deed of trust secured by an interest in any portion of the Property (a "holder") may at any time during the Term of this Agreement deliver written notice to the other Party requesting an estoppel certificate (the "Estoppel Certificate") stating to the extent such is the case:

- (i) the Agreement is in full force and effect and is a binding obligation of the Parties;
- (ii) this Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments;
- (iii) no Default exists hereunder, nor would any Default exist with the passage of time or the giving of notice, or both, or, if a Default or failure does exist, the nature thereof and the actions required to be taken by the non-performing Party to cure the Default or prevent the same from occurring; and
- (iv) any other matter affecting the status of the rights and obligations of the Parties hereunder as to which the requesting Party or the holder may reasonably inquire.

A Party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting Party or holder within thirty (30) days after receipt of the request, provided that such request is consistent with this Section 10.11. The City Manager or any person designated by the City Manager may sign Estoppel Certificates on behalf of CITY. The managing member, managing general partner, President, or other authorized representative of DEVELOPER may sign on behalf of any DEVELOPER. An Estoppel Certificate may be relied on by the holder and by Development Transferees.

The requesting Party or party benefitting from the mortgage or deed of trust shall reimburse the other Party for all reasonable and direct costs and fees incurred by such Party with respect to the preparation and delivery of the Estoppel Certificate.

11. Waivers, Delays, and Extensions of Performance Deadlines.

11.1 No Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, and failure by a Party to exercise its rights upon a Default by the other Party hereto, shall not constitute a waiver of such Party's right to demand strict compliance by the other Party in the future for the same, similar, or any different Default.

11.2 Third Parties. The Parties' respective performance obligations hereunder shall not be delayed or excused because of any act or failure to act by a third person, except as provided in Section 11.3.

11.3 Force Majeure. Notwithstanding any other provision set forth in this Agreement

to the contrary, DEVELOPER shall not be deemed to be in Default to the extent that DEVELOPER's failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond DEVELOPER's control, unreasonable delays in the issuance of any of the Future Development Approvals or other governmental permits or approvals required for the Project, or third-party litigation, or any other causes that are without the fault and beyond the reasonable control of DEVELOPER.

11.4 Notice of Delay. DEVELOPER shall give notice to CITY of any delay which DEVELOPER believes to have occurred as a result of the occurrence of any of the events described in Section 11.3. In no event, however, shall notice of a delay of any length be given later than thirty days after the end of the delay or thirty days before the end of the Term, whichever comes first.

12. Notices.

All notices required or provided for under this Agreement shall be in writing and delivered in person or sent either by certified mail, postage prepaid, return receipt requested, or by overnight delivery by a reputable independent delivery service (such as Federal Express) that provides a receipt documenting the time and circumstances of delivery. Notices required to be given to CITY shall be addressed as follows:

City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
Attention: City Manager and City Attorney

with a copy to:

Kane, Ballmer & Berkman
515 S. Figueroa Street, Suite 1850
Los Angeles, CA 90071
Attention: Susan Cola

Notices required to be given to DEVELOPER shall be addressed as follows:

BTDJM Phase II Associates, LLC
c/o DJM Capital Partners, Inc.
922 Laguna Street
Santa Barbara, CA 93101
Attention: Lindsay Parton

with a copy to:

Rutan & Tucker, LLP
611 Anton Blvd., 14th Floor
Costa Mesa, CA 92626
Attention: Jeffrey M. Oderman, Esq.

Any notice given as required herein shall be deemed given only if in writing and delivered or sent in accordance with the foregoing procedures (with mailed delivery confirmed by written receipt). A Party may change its address for notices by giving notice in writing to the other Party as required herein and thereafter notices shall be addressed and transmitted to the new address.

CITY shall additionally provide written notice of any Default by DEVELOPER to the holder of any mortgage or deed of trust secured by all or any interest in the Property which (i) delivers a written notice to CITY requesting such notices and (ii) provides CITY with such holder's address(es) for notice purposes.

13. Intentionally Omitted.

14. Recording.

This Agreement and any amendment or cancellation hereto shall be recorded against the Property at no cost to CITY, in the Official Records of Orange County by the City Clerk within the period required by Section 65868.5 of the Government Code. Notwithstanding the foregoing, in no event shall any failure or delay in recording this Agreement and any amendment to this Agreement limit or restrict the validity or enforceability of this Agreement.

15. Effect of Agreement on Title.

15.1 Effect on Title. The Parties agree that this Agreement shall not continue as an encumbrance against any portion of the Property as to which this Agreement has terminated.

15.2 Encumbrance Permitted. The Parties hereto agree that this Agreement shall not prevent or limit the right of DEVELOPER, at its sole discretion, to encumber the Property or any portion thereof or any improvement thereon by a DEVELOPER Deed of Trust; provided, however, that any such DEVELOPER Deed of Trust shall be subordinate to this Agreement, and provided further that if any portion of the Property to be dedicated or transferred to CITY pursuant to this Agreement shall be subject to any DEVELOPER Deed of Trust, such DEVELOPER Deed of Trust shall be released or reconveyed prior to the dedication or transfer.

15.3 Rights of Lenders. The holder of any DEVELOPER Deed of Trust shall be entitled to the following rights and privileges:

(a) Any holder of a DEVELOPER Deed of Trust which has submitted a request in writing to CITY in the manner specified herein for giving notices shall be entitled to receive written notification from CITY of any Default of DEVELOPER in the performance of

DEVELOPER's obligations under this Agreement.

(b) If CITY timely receives a request from the holder of a DEVELOPER Deed of Trust requesting a copy of any notice of Default given to DEVELOPER under the term of this Agreement, CITY shall provide a copy of that notice to the holder within ten (10) days of sending the notice of default to DEVELOPER. The holder shall have the right, but not the obligation, to cure the Default during the remaining cure period allowed DEVELOPER under this Agreement. If the Default is of a type that can only be remedied by the holder of the DEVELOPER Deed of Trust after obtaining possession of the Property (or applicable portion thereof as to which the holder's security interest relates) and if such holder commences the process to obtain possession within ninety (90) days after its receipt of the notice of Default, proceeds with commercially reasonable diligence to obtain possession, and cures the Default within the same period of time after obtaining possession that DEVELOPER would have had to complete such cure after its receipt of CITY's initial notice of Default to DEVELOPER, then the holder's cure of DEVELOPER's Default shall be deemed to constitute a timely cure hereunder.

(c) The holder of any DEVELOPER Deed of Trust who comes into possession of the Property or any part thereof pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property or part thereof subject to the terms of this Agreement; provided in no event shall any such holder or its successors or assigns be entitled to a building permit or occupancy certificate until all fees and other monetary obligations due under this Agreement have been paid to CITY and all otherwise applicable conditions to such permit or certificate have been satisfied.

16. Severability of Terms.

If any term, provision, covenant, or condition of this Agreement shall be determined invalid, void, or unenforceable, the remainder of this Agreement shall not be affected thereby if the tribunal finds that the invalidity was not a material part of consideration for the affected Party or Parties. The covenants contained herein are mutual covenants. The covenants contained

herein constitute conditions to the concurrent or subsequent performance by each Party benefited thereby of the covenants to be performed hereunder by such benefited Party.

17. Subsequent Amendment to Authorizing Statute.

This Agreement has been entered into in reliance upon the provisions of the Development Agreement Legislation in effect as of the Effective Date. Accordingly, to the extent that subsequent amendments to the Development Agreement Legislation would affect the provisions of this Agreement, such amendments shall not be applicable to this Agreement unless necessary for this Agreement to be enforceable or required by law or unless this Agreement is modified pursuant to the provisions set forth in this Agreement and Government Code Section 65868 as in effect on the Effective Date.

18. Rules of Construction and Miscellaneous Terms.

18.1 Interpretation and Governing Law. The language in all parts of this Agreement

shall, in all cases, be construed as a whole and in accordance with its fair meaning. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the internal laws of the State of California, with regard to conflict of laws rules. The Parties understand and agree that this Agreement is not intended to constitute, nor shall be construed to constitute, an impermissible attempt to contract away the legislative and governmental functions of CITY, and in particular, CITY's police powers. In this regard, the Parties understand and agree that this Agreement is a current exercise of CITY's police powers and except as expressly provided for herein this Agreement shall not be deemed to prevent the future exercise by CITY of its lawful governmental powers over the Property.

18.2 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

18.3 Gender. The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory, "may" is permissive.

18.4 Time of Essence. Time is of the essence regarding each provision of this Agreement as to which time is an element.

18.5 Recitals. All Recitals set forth herein are incorporated in this Agreement as though fully set forth herein.

18.6 Entire Agreement. This Agreement constitutes the entire agreement between and among the Parties with respect to the subject matter hereof, and this Agreement supersedes all previous negotiations, discussions, and agreements between and among the Parties with respect thereto.

19. Not for Benefit of Third Parties.

This Agreement and all provisions hereof are for the exclusive benefit of CITY and DEVELOPER (including without limitation authorized assignees or transferees of BTDJM Phase II Associates LLC) and shall not be construed to benefit or be enforceable by any third party, excepting only to the extent of the limited rights provided to the holders of one or more DEVELOPER Deeds of Trust in all or a portion of the Property.

20. Relationship to AHA.

DEVELOPER acknowledges and agrees that (i) nothing in this Agreement is intended or shall be interpreted to supersede, limit, modify, reduce or restrict DEVELOPER's obligations set forth in the AHA and any related housing agreements entered into by and between DEVELOPER and AGENCY with respect to the affordable housing units referred to therein.

21. Cooperation in Event of Legal Challenge.

In the event of any legal action instituted by a third party (not a Party to this Agreement) or any governmental entity or official (other than CITY or an official of CITY) challenging the validity of any provision of this Agreement, the Parties hereby agree to cooperate in defending

said action; provided, however, DEVELOPER shall indemnify, defend (by counsel reasonably acceptable to CITY), and hold harmless CITY from all litigation expenses, including reasonable attorneys' fees and costs, arising out of any legal action instituted by such third party (not a Party to this Agreement), or other governmental entity or official (other than CITY or an official of CITY) challenging any of the Development Plan Approvals. CITY shall promptly notify DEVELOPER of any such action and CITY shall cooperate in the defense thereof.

[Signatures on next page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year dated below.

“CITY”

CITY OF HUNTINGTON BEACH,
a municipal corporation

Dated: _____, 2010

By: _____
Name:
Title: Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

“DEVELOPER”

BTDJM PHASE II ASSOCIATES LLC,
a Delaware limited liability company

Dated: _____, 2010

By: _____
Name:
Title:

On _____, before me, _____,
Notary Public, personally appeared _____

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

Signature

ATTACHMENT NO. 2.37

[illegible]

On _____, before me, _____,
Notary Public, personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

[SEAL]

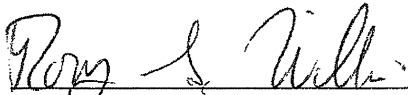
ATTACHMENT NO. 2.38

EXHIBIT A

ATTACHMENT NO. 2.39

**LEGAL DESCRIPTION
PARCEL 3**

In the City of Huntington Beach, County of Orange, State of California, being Parcel 3 of Lot Line Adjustment No. 10-006, recorded _____ as Instrument No. _____ of Official Records, in the office of the County Recorder of said county.



Rory S. Williams, L.S. No. 6654
Date: 5/20/11

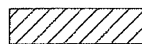
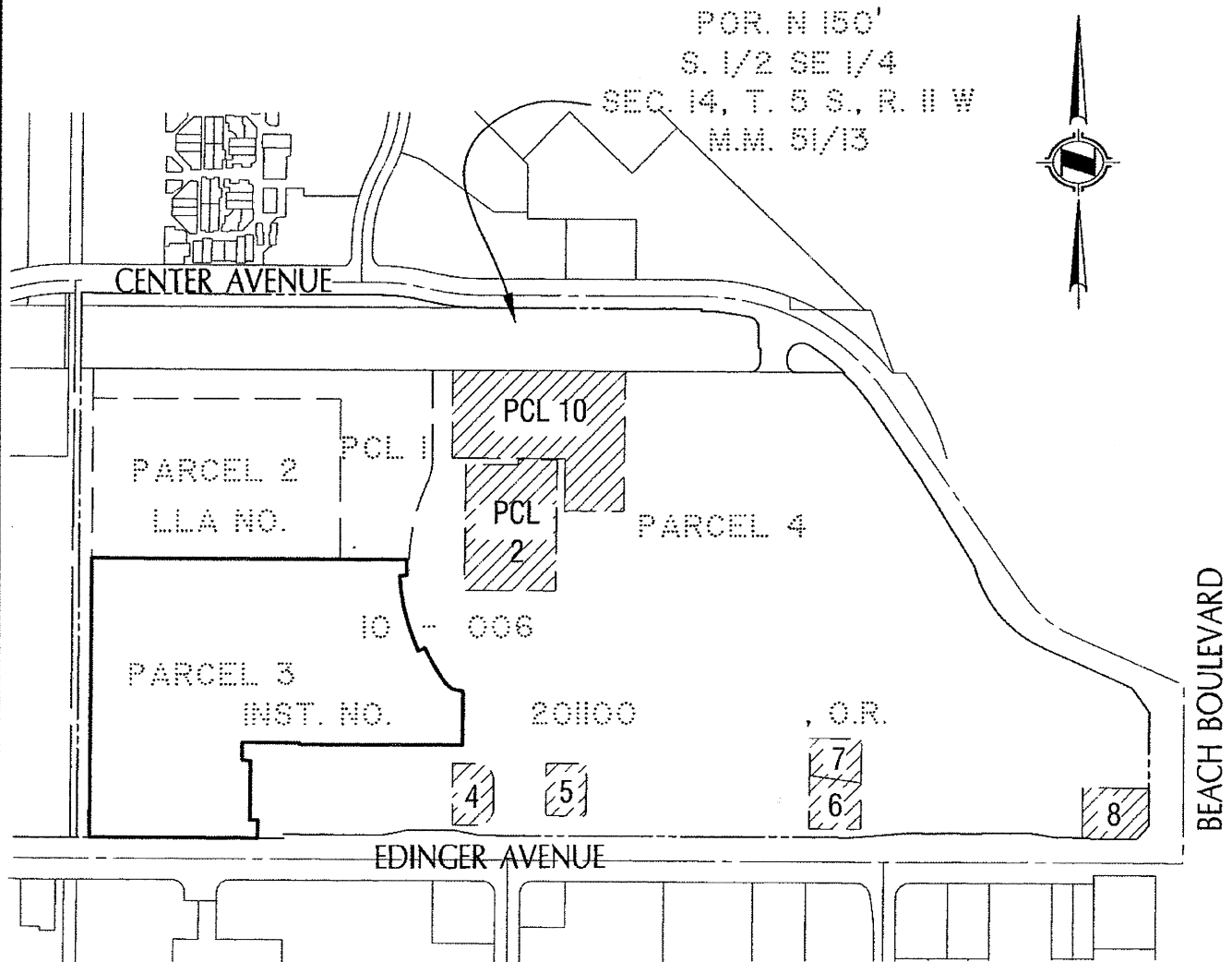


May 20, 2011
WO No. 3337-1X
Page 1 of 2
H&A Legal No. 7711
By: R. Williams
Checked By: L. Gaston

ATTACHMENT NO. 2.40

PARCEL 3

Sketch to Accompany Legal Description



INDICATES PARCELS PER
PM 2003-163, P.M.B. 358/1-9



HUNSAKER & ASSOCIATES
IRVINE, INC.

PLANNING ■ ENGINEERING ■ SURVEYING
Three Hughes • Irvine, CA 92618 • PH: (949) 583-1010 • FX: (949) 583-0759

PARCEL 3

CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA

DATE: 05-20-11	REV. DATE: —	DWG. By: R. WILLIAMS	CHK'd By: L. GASTON	SCALE: 1"= 400'	W.O. 3337-1X
FILE: I:\BELLA TERRA\LD\7711\SHT01.dwg				H&A LEGAL No. 7711	SHEET 2 OF 2

ATTACHMENT NO. 2.41

EXHIBIT B

ATTACHMENT NO. 2.42

SITE SUMMARY

PLAN	TYPE	S.F.	# OF UNITS
S1	STUDIO	509	12
S2	STUDIO	580	32
S3	STUDIO	592	10
S4	STUDIO	643	8
A1	1BR/1BA	702	46
A2	1BR/1BA	733	32
A3	1BR/1BA	782	38
A4	1BR/1BA	782	53
A5	1BR/1BA	799	23
A6	1BR/1BA	822	5
B1	2BR/2BA	1,012	32
B2	2BR/2BA	1,127	12
B3	2BR/2BA	1,146	91
C1	3BR/2BA	1,365	8
C2	3BR/2BA	1,410	22
A1	1BR/1BA EXTENDED	762	6
A3+L	1BR+LOFT/1BA	1,187	10
A5+D	1BR+DEN/1BA	1,022 avg.	12
B3+L	2BR+LOFT/1BA	1,365	12
B3M	2BR/2BA EXTENDED	1,251	3
TOTAL			467

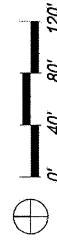
RETAIL SUMMARY	
BLDG. A	17,500 SF Retail
BLDG B	6,000 SF Retail
BLDG C	6,000 SF Retail

PARKING SUMMARY	
STUDIO/1BR (287)	1 STALL/UNIT
2BR (150)	1.5 STALLS/UNIT
3BR (30)	2.0 STALLS/UNIT
GUEST	0.2/UNIT
	666

COMMON OPEN SPACE
 REQUIRED: 90 SF/UNIT X 467 UNITS = 42,030 SF
 PROVIDED: 43,052 SF COURTYARD SPACE
 +8,305 SF 15% OF OVERALL REQUIREMENT
 49,358 SF

PRIVATE OPEN SPACE
 REQUIRED: 60 SF/UNIT
 PROVIDED: MIN. 60SF/UNIT
 (SEE UNIT PLANS)

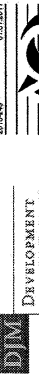
01.31.2011



1"=40'-0"

CONCEPTUAL SITE PLAN - A1.1

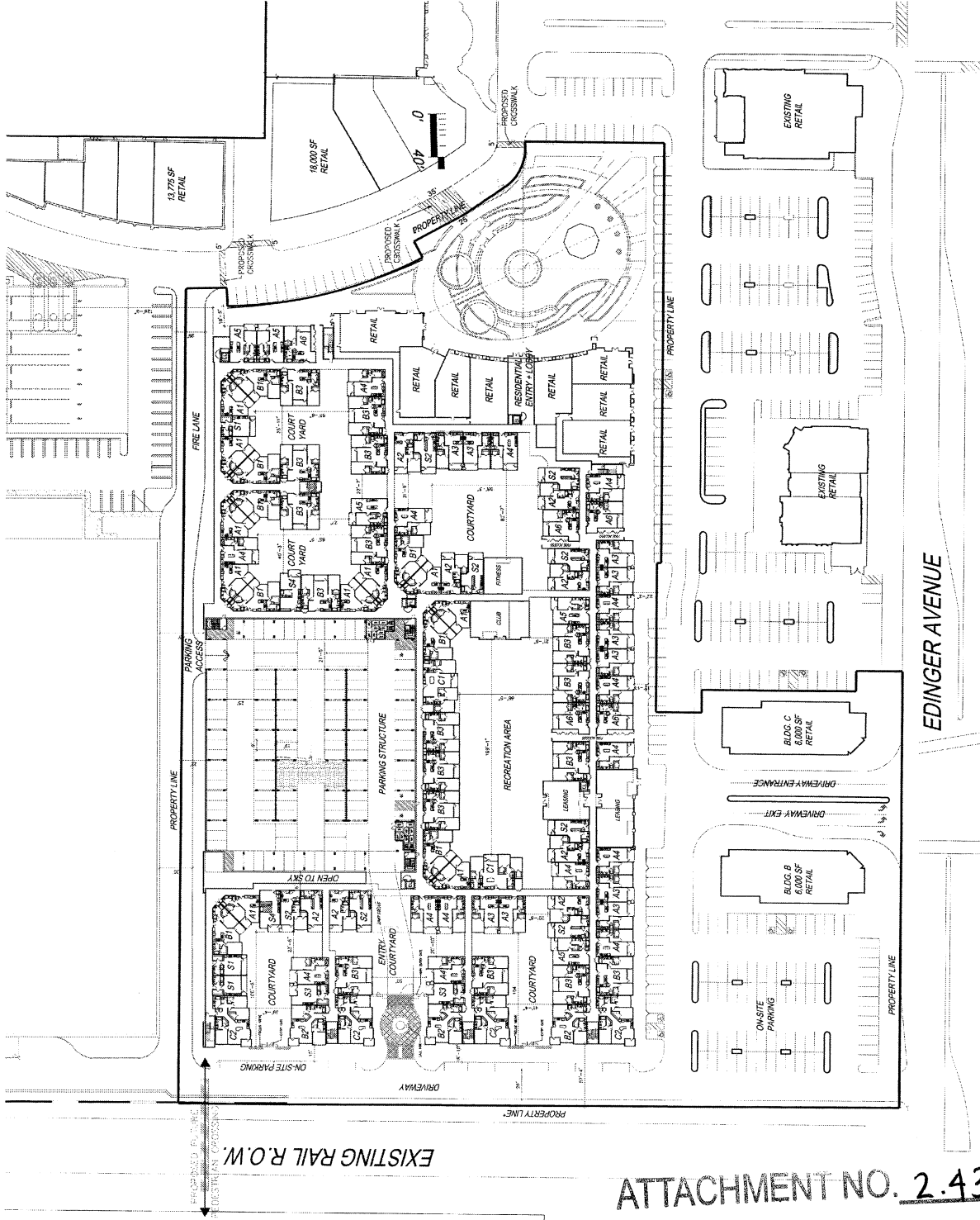
REV. 08.14.2011
01.31.2011



DEVELOPMENT
PARTNERS, INC.
922 LAGUNA ST., SANTA BARBARA, CA 93101



ARCHITECTS ORANGE
 144 NORTH ORANGE ST., ORANGE, CALIFORNIA 92666 (714) 639-9860



LEGAL DESCRIPTION: PARCEL 1 OF PARCEL MAP 86-200, PMB 255/40-45, RECORDS OF ORANGE COUNTY, CITY OF HUNTINGTON BEACH, ORANGE COUNTY/CALIFORNIA

*PROPERTY LINE SHOWN REFLECTS THE SUBDIVISION BOUNDARY. THE SITE IS ALSO SUBJECT TO A ZONE BOUNDARY.

THE VILLAGE AT BELLA TERRA HUNTINGTON BEACH, CA

EXHIBIT C

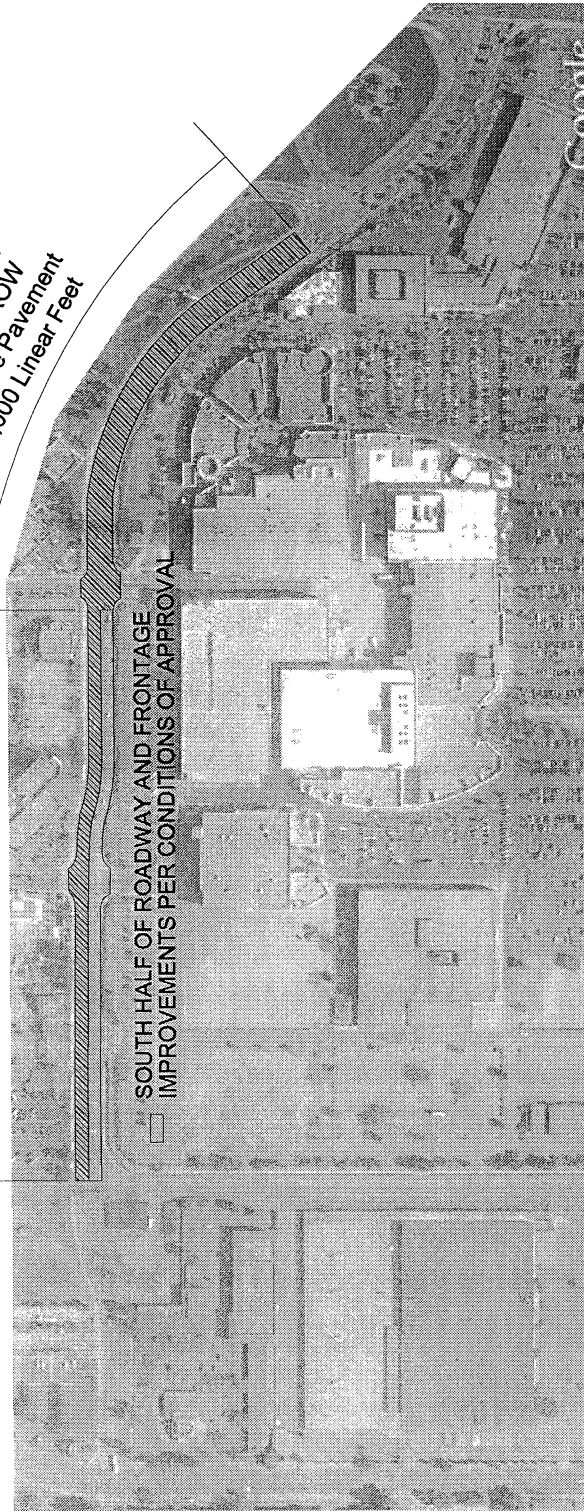
ATTACHMENT NO. 2.44

Exhibit 'C'

R&R North Half
70' Wide ROW
31' Wide Pavement
1,300 Linear Feet

R&R Full Width
70' Wide ROW
54' Wide Pavement
1,000 Linear Feet

SOUTH HALF OF ROADWAY AND FRONTAGE
IMPROVEMENTS PER CONDITIONS OF APPROVAL



PROPOSED CENTER AVE STREET IMPROVEMENTS

EXHIBIT D

ATTACHMENT NO. 2.46

04.08.11

SITE SUMMARY

UNIT MIX	PLAN	TYPE	S.F.	# OF UNITS
	S1	STUDIO	509	12
	S2	STUDIO	580	32
	S3	STUDIO	592	10
	S4	STUDIO	643	8
	A1	1BR/1BA	702	46
	A2	1BR/1BA	733	32
	A3	1BR/1BA	782	38
	A4	1BR/1BA	782	53
	A5	1BR/1BA	799	23
	A6	1BR/1BA	822	5
	B1	2BR/2BA	1,012	32
	B2	2BR/2BA	1,127	12
	B3	2BR/2BA	1,146	91
	C1	3BR/2BA	1,365	8
	C2	3BR/2BA	1,410	22
	A1	1BR/1BA EXTENDED	762	6
	A3+L	1BR+LOFT/1BA	1,167	10
	A5+M+D	1BR+DEN/1BA	1,022 avg.	12
	B3+L	2BR+LOFT/1BA	1,365	12
	B3M	2BR/2BA EXTENDED	1,251	3
	TOTAL			487

RETAIL SUMMARY

BLDG. A	17,500 SF Retail
BLDG. B	6,000 SF Retail
BLDG. C	6,000 SF Retail

PARKING SUMMARY

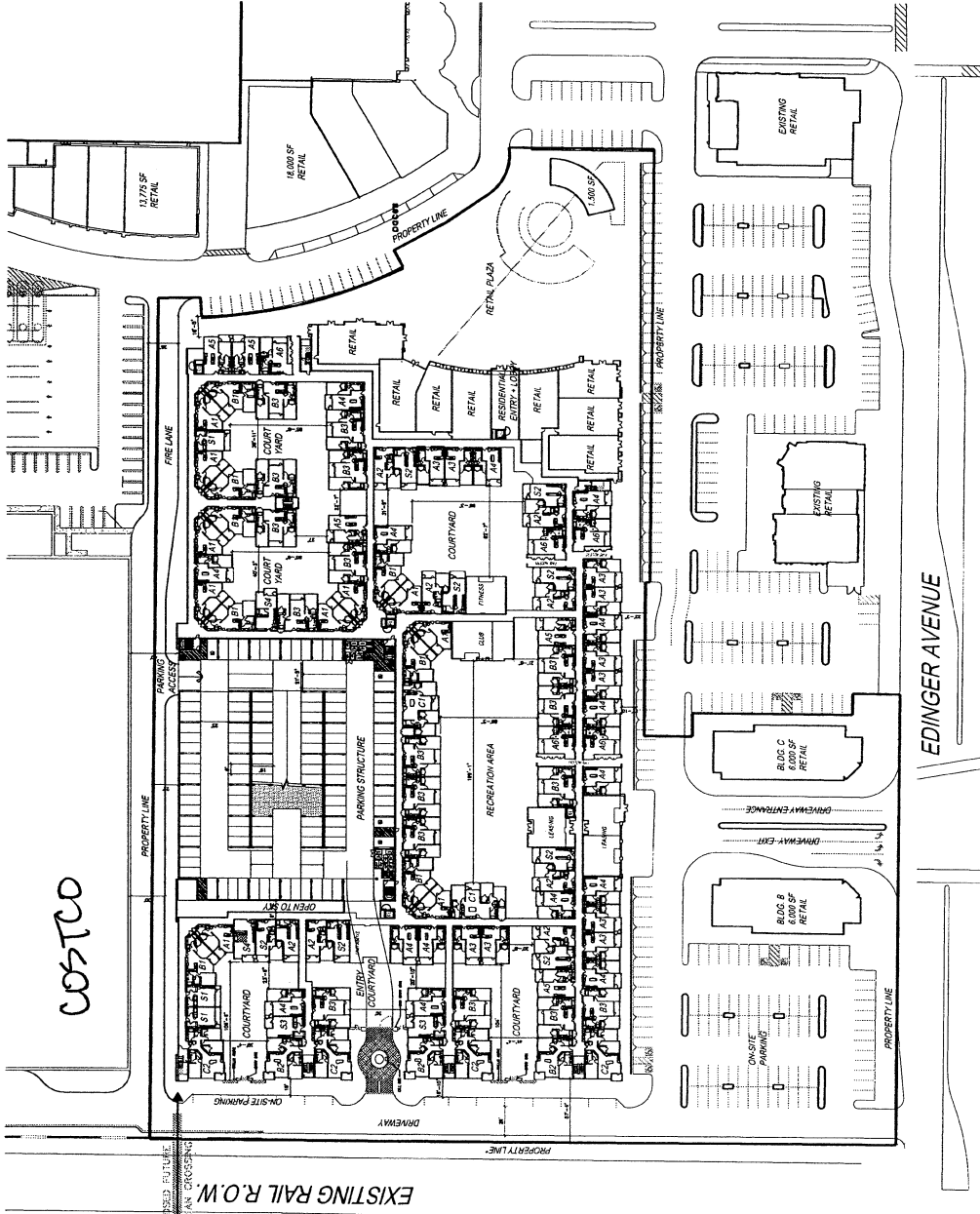
STUDIO/1BR (287)	1 STALL/UNIT	287
2BR (150)	1.5 STALLS/UNIT	225
3BR (30)	2.0 STALLS/UNIT	60
GUEST	0.2/UNIT	94
		666

COMMON OPEN SPACE

REQUIRED: 90 SF/UNIT X 487 UNITS = 42,030 SF
PROVIDED: 43,052 SF COURTYARD SPACE
+5,305 SF 15% OF OVERALL REQUIREMENT
49,358 SF

PRIVATE OPEN SPACE

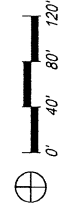
REQUIRED: 60 SF/UNIT
PROVIDED: MIN. 60SF/UNIT
(SEE UNIT PLANS)



LEGAL DESCRIPTION: PARCEL 1 OF PARCEL MAP 86-200, PMB 25540-45, RECORDS OF ORANGE COUNTY, CITY OF HUNTINGTON BEACH, ORANGE COUNTY/CALIFORNIA

*PROPERTY LINE SHOWN REFLECTS THE SUBDIVISION BOUNDARY. THE SITE IS ALSO SUBJECT TO A ZONE BOUNDARY.

THE VILLAGE AT BELLA TERRA HUNTINGTON BEACH, CA



1"=40'-0"

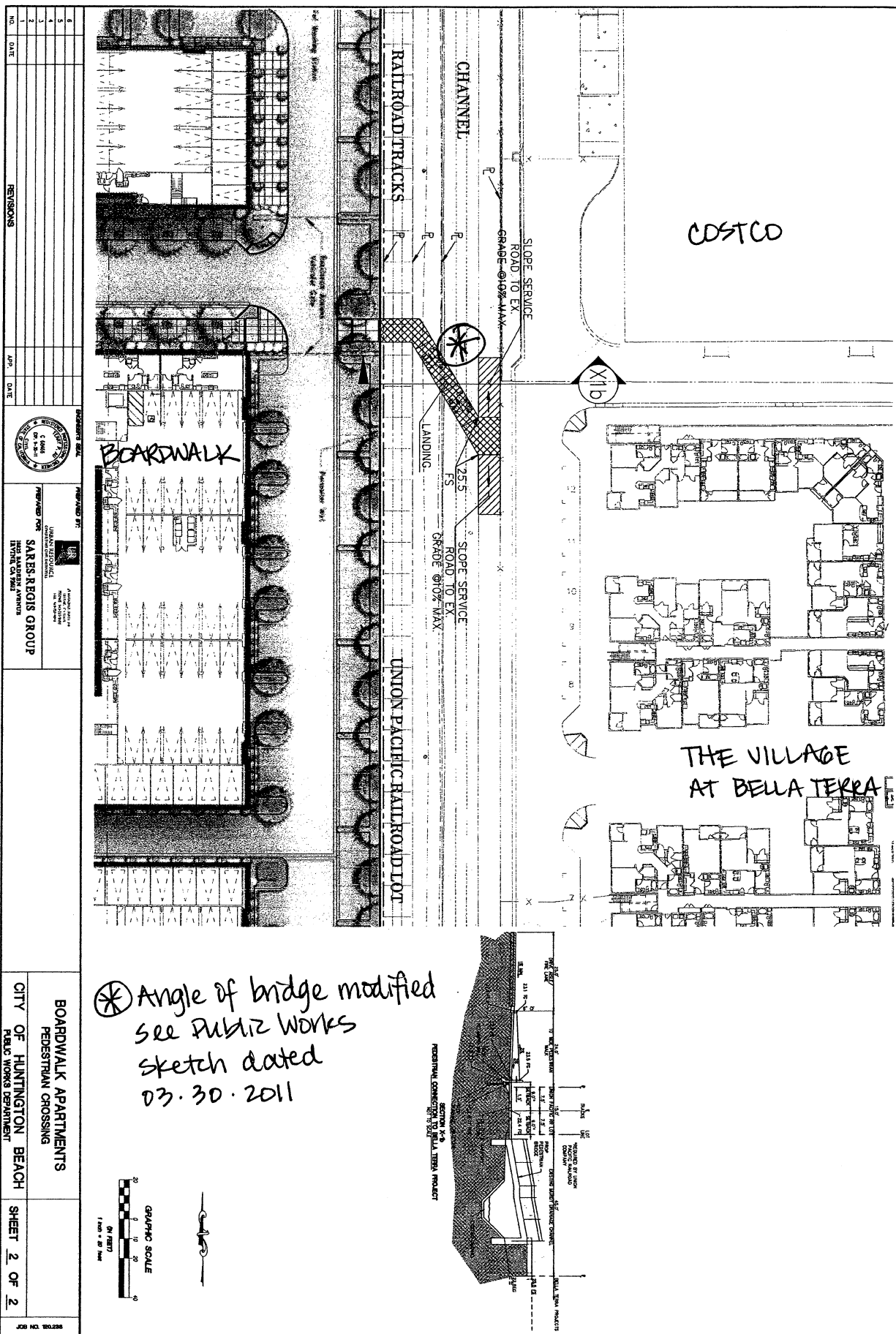
CONCEPTUAL SITE PLAN - A.1.1

2/13/2010

DIM DEVELOPMENT PARTNERS, LLC
922 LAGUNA ST., SANTA BARBARA, CA 93101



ARCHITECTS ORANGE
144 NORTH ORANGE ST., ORANGE, CALIFORNIA 92666 (714) 539-9860



NO.	DATE	REVISIONS
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		

REVISED PLAN/SKETCH
BY PUBLIC WORKS
DEPARTMENT

03-30-2011

Shows correct
right-of-way

COST CO

SLOPE SERVICE
ROAD TO EX.

GRADE @10% MAX.

Flood
Control
Channel

EL

D TRACKS

Rail
Road
Tracks

ped path

Bridge

Gate here

Gate here

City
Main
Road

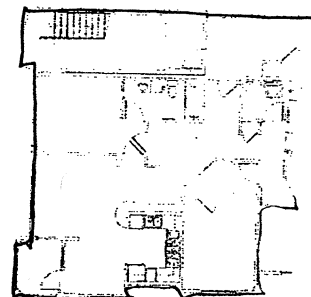
25.5

FS

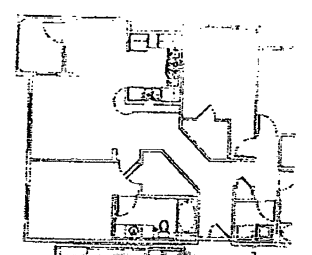
SLOPE SERVICE
ROAD TO EX.

GRADE @10% MAX.

X1b



THE VILLAGE
AT BELLA
TERRA



NORTH

ATTACHMENT NO. 249

THE BOARD-
WALK
DEVELOP-
MENT

Boardwalk Development
Water table table

Boardwalk Development

EXHIBIT F

ATTACHMENT NO. 2.50

EXHIBIT "F"

HB RESIDENTIAL CONDOMINIUM CONVERSION STANDARDS

A summary of all the requirements listed under Chapter 235 Residential Condominium Conversion standards is listed below with a staff recommendation for inclusion into the proposed development agreement. Also, a list of the Subdivision Map Act sections is included at the end.

ISSUE AREA	HBZSO SECTION	REQUIREMENT	APPLICABILITY	COMMENTS
Affordable	235.04	Conversion of lower or moderate rental housing developed with federal, state, or local assistance is prohibited	Not Applicable	
Physical elements report	235.06.A.1-5	Reports describing all physical elements of the project and recommended improvements.	Not Applicable	
CC&Rs	235.06 B.	Rules to be applied on behalf of any owners.	Applicable	
Conveyance of units	235.06 B.	" "	Applicable	
Assignment of parking	235.06 B.	" "	Applicable	
Assignment of storage	235.06 B.	" "	Applicable	
Common maintenance	235.06 B.	" "	Applicable	
Fees assessment	235.06 B.	" "	Applicable	
Maintenance of utility lines and services	235.06 B.	" "	Applicable	
Conversion plan	235.06 C.	Specific info regarding demographic and financial characteristics of the project.	Not Applicable	
Date of construction	235.06 C.1.	" "	Not Applicable	
Description of major repair	235.06 C.1.	" "	Not Applicable	
Use of project	235.06 C.2.	" "	Not Applicable	
Ownership of land	235.06 C.3.	" "	Not Applicable	
Sq ft of each unit	235.06 C.4.	" "	Not Applicable	

Rental rate history	235.06 C.5.	"	"	Not Applicable
Monthly vacancy rate	235.06 C.6.	"	"	Not Applicable
List of tenants, etc.	235.06 C.7.	Complete list of number of tenants and type of tenant households to be submitted.		
Tenants over 62	235.06 C.7.a.	"	"	Applicable
Family size	235.06 C.7.b.	"	"	Applicable
Disabled persons	235.06 C.7.c.	"	"	Applicable
Length of residence	235.06 C.7.d.	"	"	Applicable
Low and moderate and if receiving federal or state subsidies	235.06 C.7.e.	"	"	Applicable
Proposed price/unit	235.06 C.8.	Financial information to be provided.		
Proposed HOA budget	235.06 C.9.	"	"	Applicable
Type of financing and incentives	235.06 C.10.	"	"	Applicable
Method to assure affordability	235.06 C.11.	"	"	Applicable
Signed notices from each tenant of notice to convert	235.06 C.12.	Certified letter		
Vacancy rate analysis – 12 months, citywide	235.06 D.	Specific info regarding Citywide vacancy rates.		
Acceptance of reports by PC	235.06 E.	Not Applicable		
Min. construction standards	235.08	Construction standards		
Comply with health and safety violations	235.08 A.	"	"	Not Applicable
				Project will meet min. standards upon construction

Draft stops in attics	235.08 A.1.	"	"	Not Applicable	"	"
Electrical branch circuits	235.08 A.2.	"	"	Not Applicable	"	"
Smoke detectors	235.08 A.3.	"	"	Not Applicable	"	"
GFCI protection	235.08 A.4.	"	"	Not Applicable	"	"
Comply with Zoning	235.08 B.	"	"	Not Applicable	"	"
Parking	235.08 B.	"	"	Not Applicable	"	"
Landscaping	235.08 B.	"	"	Not Applicable	"	"
Refurbish and Restore	235.08 C.	"	"	Not Applicable	"	"
Affordable Housing	235.08 D.	Increases affordability to 25% (from 15% now) for low and mod. with min. 20% to low for 60 years. Max sales price shall not exceed 2.5 x median income; Max rent shall keep units w/in low-moderate.				
Tenant Benefits	235.10	Not Applicable			Tenants will sign a disclosure statement when they rent	
Notices of Intent	235.10 A.	Pursuant to government code				
Public Hearings	235.10 B.1.	Notify of hearing				
Final Map	235.10 B.2.	Notify within 10 days of final map approval plus notify of DRE application				
Tenant Discounts	235.10 C.	First right of refusal to purchase the occupied unit at a discount of price offered to general public			Applicable as modified	Applicable only for 1 st right of refusal for 90 days; tenant discount will not apply
Vacation of Units	235.10 D.	At least 120 days to vacate or until expiration of tenant's lease; tenant may terminate lease with 30 days notice			Applicable as modified	Increase to 180 days to vacate to match Gov't Code Section 66427.1 F. and specify that time period is triggered upon recordation of Final Map
No Increase in Rent	235.10 E.	No increase 2 months prior or two years after filing application			Applicable as modified	No rent shall increase within 180 days time to vacate as stipulated in 235.10 D. above

Lifetime Lease					
		All Non-Purchasing tenants over 62 years or disabled shall receive lifetime lease; with no rent increase for 2 years after filing	Not Applicable	No lifetime lease required but no rent increases as described above	
Moving Expenses	235.10 F.	\$\$ = to 3x monthly rent for relocation if relocating after City approval of conversion	Not Applicable	Tenants will sign a disclosure statement when they rent	
Relocation Assistance	235.10 G.	Provide assistance for 4 months after TTM approval.	Not Applicable		
		Non-purchasing tenants receive 12 months relocation time if 1) low or mod income, or 2) minor children in school	Applicable as modified	Min. 12 month relocation time shall be provided upon recordation of Final Map	
Discrimination	235.10 H.	No discrimination based on race, color, creed, national origin, sex, or age in CC&Rs	Applicable		
Effect on low-mod income housing	235.12	PC to consider health and safety, whether units serves low or mod income, need and demand for increases in lower cost home ownership	Not applicable	Affordable housing restrictions will continue to apply to for sale units	
Bonus for low-mod income housing	235.14	City to consider density bonus or other incentives when applicant agrees to provide 33% as low or mod income units	Not Applicable		
Findings	235.16	PC findings for approval	Not Applicable		
	235.16 A.	SMA and other code requirements met	Not Applicable	Compliance with Subdivision Map Act, General Plan, and zoning will be required upon issuance of building permit	

235.16 B.	Consistent with General Plan and specific plan	Not Applicable	"	"
235.16 C.	Conversion will conform to code	Not Applicable	"	"
235.16 D.	High standard of appearance, quality, safety	Not Applicable	"	"
235.16 E.	Will not displace significant percentage of low-mod, disabled, or senior tenants;	Not Applicable	Tenants will sign a disclosure statement when they rent. Affordable housing restrictions will apply to for sale units	
	Will not delete significant number of low-mod rental units	Not Applicable		
235.16 F.	Units have been rentals for at least 5 years	Not Applicable		
235.16 G.	Applicant has not engaged in coercive, retaliatory action regarding tenants	Not Applicable		
235.16 H.	Project is not located in coastal zone or if is in CZ then it is not a visitor serving use (hotel)	Not Applicable		

SUBDIVISION MAP ACT

The following Subdivision Map Act sections shall be applicable, modified slightly since TTM has already been approved, and included in the DA:

ISSUE AREA	SMA SECTION	REQUIREMENT	STAFF RECOMMENDATION	COMMENTS
Notifications	66427.1	1) Each tenant and each person applying for rental to receive all notices. A) Written notice of intent to convert 60 days prior to filing TTM.	Applicable with modifications	B)-F) applicable

Notification; Moving Expenses; First Month's Rent	66452.17	<p>B) 10 days written notice of application to DRE that tenant's right to purchase begins with issuance of final DRE report.</p> <p>C) Written notification of final public report from DRE within 5 days of DRE action.</p> <p>D) Written notification within 10 days after FM approval.</p> <p>E) 180 days notice of intent to convert prior to termination of tenancy</p> <p>F) Exclusive right to purchase for 90 days</p> <p>Also, if rental agreement in different language then notices shall be in same language.</p>	Applicable with modifications	<p>TTM already filed so tenants will sign a disclosure statement when they rent.</p> <p>Compensation only required if owner fails to give notice.</p>
		<p>Min. 60 days prior to filing TTM give notice to each person applying for rental of unit of plans to convert.</p> <p>Failure to give notice requires subdiviver to pay each prospective tenant:</p> <p>1) Actual moving expenses up to \$1,100</p> <p>2) 1st month rent on new unit up to \$1,100</p> <p>City can require greater compensation by ordinance or charter.</p>		
Notification	66452.18	Min. 60 days prior to filing TTM give notice to existing tenants of plans to convert.	Not applicable	Tenants will sign disclosure statement when they rent

Notification of intent to convert	66452.19	Written notice of intent to convert 180 days prior to termination of tenancy and include: Date of TTM approval, 180 days to vacate.	Applicable
Notification after DRE report and Right to Purchase	66452.20	Written notice required within 5 days of DRE report giving tenants 90 days to purchase.	Applicable
Notification after FM and rental; Assistance Required if Fail to Notify	66459	<p>If FM approved and owner rents out units, prior to sale, shall give notice: 1) unit is approved for sale and your lease may be terminated; 2) min. 90 days prior to sale further notice will be provided; 3) will have 1st right to purchase for 90 days.</p> <p>Unit shall not be referred to as "apartment" in lease docs.</p> <p>If owner fails to give notice then must provide moving expenses and 1st month rent (same as 66452.17 above)</p>	Applicable